STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO DARLINGTON COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

RECEIVED
JUL 11 2018
S.C. SUPREME COURT

Appellate Case No. 2017-001487

Dontavious Jackson,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

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RESPONDENT'S ISSUES PRESENTED

Did the PCR Court properly find no ineffectiveness of counsel for failing to object to the trial court's "just and fair" instruction where the jury instructions as a whole were free from error, where admonitions against the charge in question were not issued until years after the trial, and where incontrovertible forensic evidence established Petitioner's role in the burglary?

STATEMENT OF THE CASE

Summary of Procedural History

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Petitioner was indicted at the November 2010 term of the Darlington County Grand Jury for grand larceny, value more than $1,000 but less than $5,000 (2010-GS-16-01974); and burglary, first degree (2010-GS-16-01975). Matthew Swilley, Esq., and William Grove, Esq. represented Petitioner on the charges. Patti M. Parker, Esq. and John Holt, Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. Petitioner proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Petitioner guilty as indicted on December 1, 2010. Judge Baxley sentenced Petitioner to imprisonment for concurrent terms of five years for grand larceny, and 25 years for burglary, first degree.

Petitioner filed a timely notice of appeal and a direct appeal was perfected by Susan B. Hackett, Esq., who raised the following issue:

> Should Appellant's motion for a mistrial have been granted after a member of the venire announced to the court and the other potential jurors that Appellant was a suspect in the burglary of her parent's home?

By opinion decided August 1, 2012, the South Carolina Court of Appeals affirmed Petitioner's convictions by unpublished opinion. State v. Jackson, Op. No. 2012-UP-476 (S.C. Ct. App. filed Aug. 1, 2012). The Remittitur was issued on August 17, 2012.

Petitioner filed his first application for post-conviction relief on February 22, 2013 (2013-CP-16-00177). He alleged the following grounds for relief in his application (as set forth in Respondent's Return):

1. Failure to move for a continuance to further prepare;
2. Failure to object to a photograph;

3. Failure to object to a cigarette butt;
4. Failure to impeach Dylan Smothers;
5. Failure to make a motion to dismiss;
6. Failure to object to a witness' handling of evidence at trial;
7. Failure to impeach Deputy Pierre;
8. Failure to suppress the cigarette butt;
9. Failure to object to statements at sentencing;
10. Failure to object to chain of custody;
11. Failure to object to Dylan Smothers' testimony;
12. Failure to move for a change of venue;
13. Failure to renew the motion for continuance;
14. Failure to object to Dylan Smothers' testimony.

Respondent made its return on May 29, 2014, and an evidentiary hearing into the matter was convened on July 27, 2015, before the Honorable Thomas A. Russo. Petitioner was present at the hearing and represented by Lance S. Boozer, Esq. Joshua L. Thomas, Esq., of the South Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Petitioner proceeded only on the following allegations of ineffective assistance of trial counsel:

1. Failure to object to a photograph of a fingerprint;
2. Failure to object to the introduction of a cigarette and related DNA;
3. Failure to impeach the victim with inconsistent statements;
4. Failure to challenge the search warrant that led to the discovery of the stolen items;
5. Failure to impeach the investigating officer with a video of the crime scene;
6. Failure to object to law enforcement statements at sentencing;
7. Failure to object to the jury instructions on reasonable doubt and the role of jurors.

Petitioner testified on his own behalf; Matthew Swilley, Esq., and William Grove, Esq. also testified. By written order dated October 7, 2015, and filed October 11, 2015, Judge Russo denied and dismissed the application.

By letter dated December 23, 2015, PCR counsel Boozer filed a notice of appeal on Petitioner's behalf, but acknowledged it was not timely filed due to an inadvertent calendaring error. By order filed January 8, 2016, the Supreme Court of South Carolina dismissed the appeal

as untimely filed and indicated Petitioner would have to seek relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Jackson v. State, S.C. Sup. Ct. Order filed Jan. 8, 2016. The remittitur was issued on January 26, 2016.

Petitioner thereafter filed a second application for post-conviction relief on February 11, 2016, seeking Austin relief (2016-CP-16-00080). Respondent made its return on or about February 17, 2017, consenting to Austin relief. By Order dated February 23, 2017, and filed March 16, 2017, the Honorable Roger E. Henderson granted Petitioner's request for Austin relief.

This appeal follows.

Summary of Facts Adduced at Trial

On the morning of November 6, 2009, Dylan Smothers ("Dylan") left his house and headed to school. (Appx. 110). At approximately 3:20 p.m., Dylan returned home and noticed the patio gate and the screen door to his porch were both ajar. (Appx. 110-11). Surprised and alarmed, Dylan walked to the porch and discovered one of the windows was broken out, a cigarette butt was lying on the porch, and a pot in front of the window was flipped over. (Appx. 112-13). Through the broken window, he observed a brick on the kitchen floor. (Appx. 113). Dylan then called his mother, Angela Smothers ("Angela"), to let her know what he observed, and she returned home, contacting the police on the way. (Appx. 112; pp. 128-29). Once home, Angela also noticed the broken window, the overturned pot, and the cigarette butt on the porch, and she and Dylan waited for law enforcement officers to arrive. (Appx. 113; p. 129).

Shortly thereafter, Officer Eric Pierre and Sergeant David Young of the Darlington County Sheriff's Office responded to the scene. (Appx. 140; pp. 153-54). Upon arrival, the officers noticed the broken window and found glass inside and outside of the home. (Appx. 142;

p. 155). After entering the residence, the officers discovered the interior was "ransacked" and in disarray. (Appx. 143; p. 156). Based on the fact the doors to the home were still locked, Officer Pierre determined the intruder's point of entry and exit was the broken window. (Appx. 144; p. 149).

After the residence was secured, Dylan and Angela entered the home and discovered the intruder absconded with a television valued at approximately $400 to $500, two shotguns, a scoped rifle, a single-shot rifle, a pistol, a compound bow, a crossbow, and a box of shotgun shells. (Appx. 113-14; pp. 121-22; p. 129). The total estimated value of the stolen property was $3,500. (Appx. 145). Additionally, Sergeant Young photographed the crime scene, collected fingerprints from the broken window and other areas of the house, took a D.N.A. sample from a television cable, and collected the cigarette butt from the porch. (Appx. 146; pp. 159-60; p. 165).

Subsequently, the collected evidence was submitted to S.L.E.D. for analysis. (Appx. 167). Based on the results of the analysis, Sergeant Young obtained an arrest warrant for Petitioner and a search warrant for Petitioner's property.[1] (Appx. 168). The search warrant was executed on December 8, 2009, and officers located Dylan's compound bow and shotgun shells in an abandoned building on Petitioner's property located approximately thirty to forty feet from Petitioner's trailer. (Appx. 168; pp. 181-84; p. 306). Dylan and Angela positively identified the recovered property as the items stolen from their home. (Appx. 116; pp. 131-32; p. 170). However, the firearms, television, and crossbow were never recovered. (Appx. 194). Petitioner

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[1] Analysts at S.L.E.D. conclusively identified the latent fingerprints collected at the victims' home as Petitioner's fingerprints. (Appx. ##). Special Agent Andrena Belton, an expert in latent print analysis, matched over forty-three characteristics from Petitioner's known fingerprints to the recovered latent prints. (Appx. ##). Additionally, Adrienne Hefney, an expert in forensic D.N.A. analysis, analyzed the cigarette butt collected at the scene and determined Petitioner was the major contributor of the D.N.A. recovered from the evidence. (Appx. ##).

was then arrested and indicted for first-degree burglary and grand larceny, and he proceeded to trial. (Appx. 9; pp. 30-31; pp. 560-65).

The trial court's charge on the law emphatically impressed upon the jury the solemnity and gravity of the proceedings. (Appx. 329-43). The trial court firmly instructed the jury that the indictments were not evidence, were not to be accepted as truth, and that the jury was to accept only the evidence presented at trial: "the testimony of the witnesses right here that came from this witness stand during the course of the trial, as well as the exhibits placed into evidence during the course of the trial[.]" (Appx. 331, ll. 1-12) (excerpted quote at p. 331, ll. 8-11). The trial court instructed the jury that Petitioner was entitled to the presumption of innocence, and entitled to a verdict of not guilty unless and until the State proved each and every element of each particular offense beyond a reasonable doubt. (Appx. 331, ll. 13-22). The trial court instructed the jury at length regarding its ability to judge credibility, and amid that charge on credibility, instructed the following:

> Now, I will also tell you that in deciding what the facts are, you the jury may believe as much or as little of any witness's testimony you think proper. You may believe one witness against a whole group of witnesses, or you may do just the opposite. You may believe part of what a witness says and completely disbelieve the rest. I will tell you that throughout this process of finding the facts you must have one objective, and that is to keep that in mind which is to seek and find the truth, regardless of from which side of the case or from which witness that truth may come.

(Appx. 332, ll. 15-25). The trial court thereafter instructed the jury on direct and circumstantial evidence. (Appx. 333, ll. 1-18). Instructing the jury on how to weigh the evidence, the trial court noted there was no "set of scales to go back there and weigh the evidence on[,]" but rather that weighing the evidence was "entirely a mental process" and "that evidence that weighs with

you is evidence that convinces you of its truth regardless again from which witness or what side of the case that evidence may come." (Appx. 333-34).

The trial court instructed the jury that he was the judge of the law and the jury was bound to accept the law as the court provided it, and to disregard what they may have previously heard on the law. (Appx. 334, ll. 3-18). The trial court summarily charged the jury to just "accept the law as I give it to you here in this proceeding, because I am giving it to you correctly. Apply it to the facts as you find them, and if you do that, then you will reach a verdict that is just and fair in this case." (Appx. 334, ll. 14-18).

The trial court returned again to the subject of the burden of proof; the court emphasized the state has the burden of proof, the defense has no burden, and that the burden never shifts. (Appx. 334-35). The court again instructed the jury the State's burden was to prove its case beyond a reasonable doubt, and thereafter explained what constituted a reasonable doubt. (Appx. 334-36). The trial court unequivocally instructed "the jury must make the determination here of whether or not reasonable doubt exists as to the guilt of the accused." (Appx. 336, ll. 1-3). The trial court thereafter instructed the jury on the law as was relevant to each particular charge against Petitioner, emphasizing repeatedly that the State had to prove each element explained beyond a reasonable doubt. (Appx. 336-42).

In closing, the trial court returned broadly to the honor and justice of the proceedings, and in particular instructed the jury:

> Whatever verdict --- As the presiding officer here in the courtroom, whatever verdict you reach, it is important to me and to this process that that verdict be the result of your going into the jury room, *confining your consideration to the evidence put forth in this courtroom*, weighing it fairly, and weighing it impartially, and applying it to the law that I have given you here in this charge. And if you do that, and I have every confidence that that is what you will do, then you will reach a verdict that is just and that is fair in this case. I will tell you that

> everyone is entitled, both sides of this case, to justice, and nothing more and nothing less. We owe no support to any party. We owe no sympathy to any party. And I am of the confirmed opinion that whatever result you reach will in fact represent truth and justice for these parties.

(Appx. 343, ll. 8-22) (emphasis added). The attorneys thereafter made their closing arguments. (Appx. 344-80). Petitioner was convicted as indicted after just over an hour of deliberation and sentenced to 25 years. (Appx. 385-403; p. 562; p. 565).

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id.; Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Strickland at 687. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

Strickland, 466 U.S. at 689. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Id. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. at 697. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id.

ARGUMENT

I. THE PCR COURT PROPERLY DENIED RELIEF BECAUSE THE JURY INSTRUCTIONS AS A WHOLE PROPERLY CONVEYED THE LAW TO THE JURY, THE BASIS FOR OBJECTION WAS NOT EVIDENT UNTIL NEARLY TWO YEARS AFTER TRIAL, AND ANY CONCEIVABLE ERROR WAS HARMLESS IN LIGHT OF THE EXTRAORDINARILY STRONG EVIDENCE TO SUPPORT PETITIONER'S CONVICTION

Counsels provided Petitioner effective representation and far more than "any evidence" exists to support the PCR Court's denial of relief. Petitioner's smokescreen of outrage based on issues not raised to this court and an issue that was rejected on direct appeal is insufficient to undermine the PCR Court's Order of Dismissal.

a. The jury instructions as a whole exhaustively emphasized to the jury that they were to consider only the competent evidence before them and that their duty was to determine if the State met its burden of proving Petitioner's guilt beyond a reasonable doubt.

"Jury instructions on reasonable doubt which charge the jury to 'seek the truth' are disfavored because they run the risk of unconstitutionally shifting the burden of proof to a defendant." State v. Aleksey, 343 S.C. 20, 26-27, 538 S.E.2d 248, 251 (2000) (quotation omitted). "However, jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." Id., 343 S.C. at 27, 538 S.E.2d at 251 (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)). "The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." Id. (citations omitted).

The Court already reviewed the exact charge at issue, delivered by the same trial judge, in State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). The Court then found the mistake did not prejudice the defendant because the charge as a whole properly conveyed the law. Id., 401

S.C. at 260, 737 S.E.2d at 477. The extensive review of the jury instructions set forth in the Statement of the Facts, *supra*, demonstrates the trial court unequivocally and repeatedly admonished the jury that their duty was to determine if the State met its burden of proving Petitioner's guilt beyond a reasonable doubt. The instructions repeatedly emphasize that the jury is bound to limit its review to the evidence presented at trial. As was the case in Aleksey, the sole invocation that the jury should "seek the truth" appears in the portion of the charge relating to the jury's judgment of credibility.[2] There can be no doubt the jury understood its restriction to consider only the evidence before it, and that the burden of proving the case beyond a reasonable doubt was only and always on the State. As in Aleksey and Daniels, the charge as a whole properly conveyed the law, and no conceivable prejudice exists from the alleged failure to object by Counsels.

Petitioner attempts to distinguish this case by spinning an illusion of disregard from both the trial courts generally and from the trial judge in this case specifically, and demands the Court vacate the conviction to send a stronger signal to the trial bench. The trial at issue occurred a mere six months after the underlying trial in Daniels, let alone the nearly two years before the Daniels opinion was issued. All of the other cases cited by Petitioner are similarly recent, if not from the last year.[3] A trial judge can be no more clairvoyant than counsel and cannot be taken to

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[2] Respondent notes the "seek the truth" portions were not challenged below.

[3] See State v. Pradubsri, 420 S.C. 629, 803 S.E.2d 724 (Ct. App. **2017**) (The Honorable Thomas A. Russo's description of reasonable doubt as "doubt which makes an honest, sincere, conscientious juror in search of the truth hesitate to act" was harmless); State v. Deleston, 2016-UP-055 (S.C. Ct. App. filed Feb. 10, **2016**) (The Honorable Kristi Lea Harrington's description of a trial as "a search for the truth in an effort to make sure that justice is done" was harmless); State v. House, 2014-UP-048 (S.C. Ct. App. filed Feb. 5, **2014**) (The Honorable Clifton Newman's instruction in the vein of Pradubsri found harmless); State v. Partain, 2012-UP-311 (S.C. Ct. App. filed May 16, **2012**) (The Honorable R. Lawton McIntosh's instruction to jury "to search for the truth" was harmless); State v. Beaty, ___ S.C. ___, 813 S.E.2d 502 (**2018**) (The Honorable W. Jeffrey Young's preliminary remarks that the jury's role was to "search for the truth," determine "true facts," and render a "just verdict" were harmless). Whether these cases reflect a recurring error by the trial bench of South Carolina, or merely the defense bar's relentless campaign against any reference to "truth" in a criminal trial is a subject to consider in other appeals.

task for failing to follow a Supreme Court directive that had not yet been issued at the time of trial.

Petitioner also fabricates a panoply of imagined errors either not at issue or which very simply *do not exist* in the record. First, Petitioner accuses the trial judge of telling the jury "that its duty was to determine whether Petitioner was guilty or *innocent*." (Petition for Writ of Certiorari at 14) (emphasis original). The only invocations of innocence in the entirety of the charge on the law are in the context of the trial court's instructions that the defendant is presumed innocent and that the burden never shifts such that he must prove himself or herself innocent—Petitioner's claim is explicitly contrary to the record. "Backwards" does not mean "forwards," "left" does not mean "right," and "presumed innocent" does not mean "he must prove his innocence." Second, Petitioner resurrects and bootstraps the issue that failed on direct appeal, which was rightly deemed cured by an extensive curative instruction from the trial court. Third, Petitioner complains of elements of the State's closing argument not raised to the PCR Court or on direct appeal. Neither of these last two issues have anything to do with whether the jury instructions, as a whole, were free from error and properly conveyed the law to the jury. Accordingly, the petition should be denied.

b. The admonition from the Supreme Court regarding the "truth and justice" portion of the instruction was not issued until nearly two years after Petitioner's conviction, and the other criticisms issued by the Supreme Court cited by Petitioner are even more recent.

Reasonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law. Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016). As Petitioner acknowledges, Teamer explicitly addresses whether Counsel can be found ineffective for failing to divine the coming of State v. Daniels—the Court *unanimously reversed* a grant of relief on the very ground insisted upon by Petitioner, reaffirming that "[w]e have never

required an attorney to be clairvoyant or anticipate changes in the law[.]" Teamer, 416 S.C. at 183, 786 S.E. at 1115 (quoting Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994)).

The Court's holding in Teamer is precisely applicable here. Petitioner attempts to tilt straight on at Teamer by arguing that Aleksey and its own admonition was firmly established precedent at the time of trial, but that's no more or less true here than it was in Teamer. Furthermore, Aleksey was not concerned with instructions on a "just and fair" verdict, but rather was concerned with the instruction to "*seek* the truth." As noted in footnote 2, *supra*, that portion of the instruction was not challenged in the hearing below, and in any event did not impermissibly shift the burden against Petitioner for the same reasons as set forth in Aleksey—it was included as part of an instruction on the jury's power to determine the credibility of witnesses.

The particular charge at issue was not explicitly rebuffed until the Supreme Court's holding in Daniels in October 2012, and as such Counsels committed no error in not objecting. Accordingly, the petition should be denied.

c. Petitioner was convicted on the basis of extremely compelling forensic evidence and the recovery of stolen goods from a location proximate to his residence, not the trial court's jury charge.

"Ordinarily, the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Only in rare cases may overwhelming evidence of guilt serve as a categorical bar to preclude a finding of prejudice; for the evidence to be overwhelming, it must include something utterly conclusive, such as a confession, DNA evidence demonstrating guilt, or some combination of physical and corroborating evidence so strong that the Strickland standard cannot possibly be met. Id., 422 S.C. at 190-91, 810 S.E.2d at 844-45. Whether the strength of the evidence is characterized as

an "overwhelming" categorical bar or merely "very strong" such that there is no prejudice in the specific context, the underlying and fundamental question is "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id., 422 S.C. at 188, 810 S.E.2d at 843 (quoting Strickland, 466 U.S. at 695).

There is no chance any factfinder would have had a reasonable doubt respecting guilt. As noted in the Statement of the Facts, *supra*, Petitioner was tied to the burglary by way of latent fingerprints lifted from the scene, D.N.A. evidence extracted from a cigarette butt recovered from the crime scene, and the recovery of the goods stolen in the burglary from an abandoned building mere feet away from his own residence. Absent a written and recorded confession, high-definition video recording the burglary, and/or the incidental capture of the wrongdoer in the course of the act, a more comprehensive case to support conviction for burglary cannot be presented. No part of this evidence needs to be "set aside" as part of analysis of the propriety of the jury charge. Petitioner's guilt firmly established, he could not have been prejudiced by the error alleged in the Court's jury instruction, and the petition should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

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DONTAVIOUS JACKSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari Pursuant to Austin v. State** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Susan B. Hackett, Esquire
1330 Lady Street, Ste. 401
Columbia, SC 29201

This 11th day of July, 2018.

MALLORY MORRIS
Legal Assistant for Respondent

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
JUL 11 2018
S.C. SUPREME COURT

July 11, 2018

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

RE: **Dontavious Jackson v. State of South Carolina**
Appellate Case No. 2017-001487
Lower Court Case No. 2016-CP-16-0080

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari Pursuant to Austin v. State** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General
S.C. Bar No. 101260

JEJ/mm
Enclosures

cc: Susan B. Hackett, Esquire