

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

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BRADLEY GERALD MULLINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000518

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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## **ISSUE PRESENTED**

Whether the PCR court erred in finding counsel provided effective representation where counsel failed to investigate whether petitioner's codefendants lied about their unfamiliarity with the area, where the state argued petitioner's knowledge of the location of the decedent's home was evidence that placed him at the crime scene and that his codefendants were unfamiliar with the area, since an investigation would have revealed the codefendants were, in fact, familiar with the area, and this impeachment evidence would have undermined the credibility of these key prosecution witnesses?

## STATEMENT

Petitioner was indicted for the murder of Kelly Elliott and the first-degree burglary of his home by an Horry County Grand Jury on September 25, 2013. App. 703 – 706. He was tried before the Honorable Larry B. Hyman and a jury, December 2 – 5, 2013. App. 1. William Isaac Diggs represented petitioner; J. Scott Hucks and George DeBusk represented the state. App. 1.

The decedent, a gun collector with a makeshift shooting range, lived off a dirt road in rural Loris. App. 79, l. 24 – 81, l. 5; App. 83, ll. 8-9; App. 84, ll. 7-10; App. 79, ll. 4-5. He was found shot to death inside his home on September 14, 2008. App. 107, l. 23 – 108, l. 22. His back door was ajar and glass was broken out. App. 140, ll. 4-22. His bedroom door had been kicked in, his gun cabinet was empty, and his gun cases were empty. App. 152, ll. 6-25. App. 141, ll. 9-16; App. 142, l. 19 – 143, l. 1. His body had been covered with a blanket after he was shot twice—once in the chest and once in the head. App. 151, ll. 5-18. According to the solicitor, the case went “cold” for a couple of years. App. 68, ll. 7-11.

The state called petitioner’s case to trial just a few months after it had served warrants on him and procured indictments, despite knowing where he was for a number of years. App. 666, ll. 11-13; App. 8, l. 23 – 9, l. 10; App. 22, l. 15 – 23, l. 4; App. 678, l. 16 – 679, l. 8; App. 703 – 706; App. 8, l. 24 – 9, l. 10.

William Diggs, who was later disbarred, was appointed to represent petitioner at his trial. App. 663, l. 15 – 664, l. 1. Diggs claimed he had enough time to prepare for petitioner’s trial. App. 671, ll. 2-4. However, Diggs did not investigate the case beyond speaking with petitioner’s family members, including his codefendants, and visiting the crime scene. App. 666, ll. 2-16. “So just looking at the property and going through the evidence that the State did provide in the

case was basically what I did in preparation for the case.” App. 666, ll. 13-16. “I didn’t use an investigator.” App. 666, l. 9.

Four people were charged with the murder and burglary: Anthony Earl Ray, Charles Mullins, Jr., Arlie Mullins, and petitioner. App. 333, ll. 1-7; App. 314, ll. 18-22; App. 328, ll. 9-12. The four men were cousins. App. 238, l. 9 – 239, l. 8. Petitioner was tried severally and all three codefendants testified against him, two of them admitted they hoped for “reduced sentencing” from the state in return for their testimony. App. 1; App. 3, l. 20 – 4, l. 3; App. 381, l. 22 – 382, l. 11; App. 314, l. 18 – 315, l. 6.

The state alleged petitioner went with his three codefendants to steal guns from the decedent’s home. App. 499, ll. 1-5; App. 68, ll. 19-21. It was undisputed that petitioner had previously rented a home from the decedent, and the state argued he was the only one of the four men who knew the decedent and where he lived. App. 68, ll. 22-23; App. 11, ll. 3-9; App. 481, ll. 10-14.

There was no physical evidence connecting petitioner to the crime. The defense argued that petitioner was not present during the crime, and that the family was trying to “shift the blame” to help Anthony Earl Ray by “dumping” the crime on petitioner. App. 454, ll. 8-23. Petitioner was convicted based on his codefendants’ belated claims made years later, that he directed them to the location and that it was an area they were unfamiliar with, and that he fired the fatal shot.<sup>1</sup> App. 320, l. 21 – 321, l. 5; App. 317, ll. 11-13; App. 330, ll. 16-17; App. 328, l.

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<sup>1</sup> While three other family members claimed that petitioner made incriminating remarks, these family members waited years before making these allegations, and two of them did not share this information with law enforcement officers when questioned about the crime. App. 194, ll. 10-19; App. 199, ll. 14-25; App. 220, ll. 19-23; App. 233, l. 23 – 224, l. 8; App. 235, ll. 2-17; App. 251, l. 14 – 253, l. 1; App. 269, ll. 4-8.

21 – 329, l. 2; App. 338, ll. 6-19; App. 378, ll. 18-19; App. 400, l. 22 – 401, l. 25; App. 346, ll. 8-22; App. 292, l. 14 – 293, l. 4; App. 296, ll. 17-23; App. 299, ll. 13-14; App. 303, ll. 19-25.

Anthony Earl Ray, the man who admittedly shot the decedent in the spine, testified, “I don’t remember where we drove. I’m not from down here.” App. 368, ll. 1-2; App. 276, ll. 4-7; App. 378, ll. 18-19.

Petitioner would later testify that if Diggs had investigated, he would have found reliable documentation that his codefendants were lying about being unfamiliar with the area. App. 638, l. 10 – 639, l. 11. Petitioner testified that both Anthony Earl Ray and Arlie Mullins had previously been arrested within a half mile of the decedent’s home. App. 639, ll. 4-7. Petitioner also offered that his codefendants had lived in the area and their children attended local schools. App. 639, ll. 2-4. This was valuable information, because the state’s position that petitioner was the only man in the group who knew where the decedent lived bolstered the credibility of the otherwise unreliable codefendants.

The jury deliberated for over five hours. App. 523, l. 25 – 524, l. 1; App. 535, ll. 15-19. It asked to re-hear the testimony of three witnesses, including two codefendants—Anthony Earl Ray and Charles Mullins, Jr. App. 525, l. 8 – 526, l. 11. It sent a note that it was “deadlocked,” and the court issued an *Allen*<sup>2</sup> charge. App. 530, l. 24 – 531, l. 18.

Petitioner was subsequently convicted as indicted and received life sentences for both offenses. App. 707 – 708. This Court can take judicial notice that Anthony Earl Ray, who was

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<sup>2</sup> *Allen v. United States*, 164 U.S. 492 (1896).

charged with murder when he testified at petitioner's trial, received a fifteen-year sentence on the reduced charge of voluntary manslaughter.<sup>3</sup>

After his conviction was affirmed on direct appeal in *State v. Mullins*, Op. No. 2016-UP-062 (S.C. Ct. App. 2016), petitioner filed an application for post-conviction relief (PCR). App. 602 – 604; App. 606 – 615. The state made a return and partial motion to dismiss January 30, 2017. App. 616 – 623. A hearing was held before the Honorable William H. Seals on November 29, 2017. App. 624. Steven W. Fowler represented petitioner and Johnny E. James, Jr., represented the state. App. 624. The PCR court issued an order of dismissal March 13, 2018. App. 691 – 702.

This petition for writ of certiorari follows.

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<sup>3</sup> An “incarcerated inmate search” performed on the South Carolina Department of Corrections’ website reflects Anthony Earl Ray has a projected release date in 2024.

## ARGUMENT

The PCR court erred in finding counsel provided effective representation where counsel failed to investigate whether petitioner's codefendants lied about their unfamiliarity with the area, where the state argued petitioner's knowledge of the location of the decedent's home was evidence that placed him at the crime scene and that his codefendants were unfamiliar with the area, since an investigation would have revealed the codefendants were, in fact, familiar with the area, and this impeachment evidence would have undermined the credibility of these key prosecution witnesses.

Counsel's failure to investigate the codefendant's backgrounds was deficient, where there was no physical evidence against petitioner and the credibility of petitioner's codefendants was key, as they were the only eyewitnesses to the crime. A criminal defense attorney has a duty to conduct a "reasonable investigation." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). "This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Ard v. Catoe, supra*).

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of trial counsel, a PCR applicant must show that: (1) counsel's representation fell below an objective standard of reasonableness and, (2) but for counsel's errors, there is a reasonable probability the result at trial would have been different. *Gilchrist v. State*, 350 S.C. 221, 226, 565 S.E.2d 281, 284 (2002) (citing *Strickland*,

*supra*). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. *Id.*

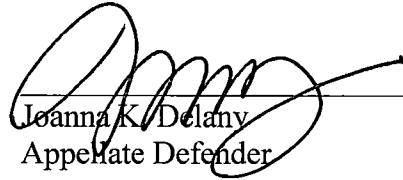
The credibility of the codefendants was already compromised by the fact they had yet to be tried for the murder and their disclosures came years after the crime. Evidence they were lying about being unfamiliar with the location of the crime would have weighed in favor of petitioner. Counsel's failure to investigate the backgrounds of the codefendants was deficient, since an investigation would have revealed they were quite familiar with the area—two of them had been arrested within a half mile of the crime scene, and they had all resided in the county and their children attended local schools.

Petitioner was prejudiced, as shown by the length of the jury's deliberations, its note that it was deadlocked, and the court's issuance of an *Allen* charge. The jury's request to re-hear testimony of two of the codefendants also highlights the importance of their credibility in the minds of the jury members and highlights the prejudice to petitioner. This Court has looked at jury questions in determining prejudice and recognized that "when a jury submits a question to the court following a jury charge, it is reasonable to assume the jury is focusing its 'critical attention' on the specific question asked." *Rutland v. State*, 415 S.C. 570, 579, 785 S.E.2d 350, 354 (2016). *Accord State v. Blassingame*, 271 S.C. 44, 46-47, 244 S.E.2d 528, 530 (1978).

The jury was clearly hesitant to convict petitioner and had focused its critical attention on the codefendants' testimony. Had it heard additional evidence further undermining the state's theory of the case and the credibility of its key witnesses, there is a reasonable probability the outcome of the trial would have been different. *Strickland*, 466 U.S. 668.

**CONCLUSION**

By reason of the foregoing argument, petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.

  
Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of November, 2018.

STATE OF SOUTH CAROLINA  
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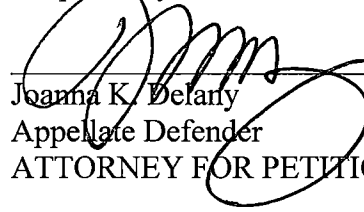
RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Bradley Gerald Mullins 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 post-conviction relief hearing before Judge William H. Seals, which was held on November 29, 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 Bradley Gerald Mullins.

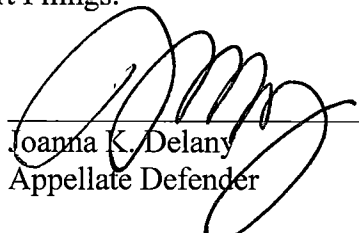
Respectfully Submitted,

  
\_\_\_\_\_  
Joanna K. Defary  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 5th day of November, 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."



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South Carolina Commission on Indigent  
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ATTORNEY FOR PETITIONER

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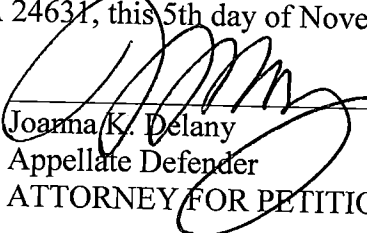
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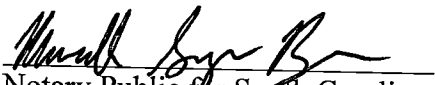
RESPONDENT

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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 has been served upon Johnny Ellis James, Jr., 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 on Bradley Gerald Mullins, #1060229, at Keen Mountain Correctional Center, P.O. Box 860, Oakwood, VA 24631, this 5th day of November, 2018.

  
\_\_\_\_\_  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 5th day of November, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 26, 2028