

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

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RECEIVED

JAN 11 2019

WILLIAM DOUGLAS ZEIGLER,

PETITIONER, S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001011

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Robert M. Dudek  
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**

Whether defense counsel provided ineffective assistance of counsel where he candidly admitted he did not do any independent investigation in this case, since counsel had a duty to investigate all surrounding circumstances which supported petitioner's testimony that the sexual encounter was consensual after the complainant asked petitioner for a ride?

## STATEMENT

### **Procedural history**

Petitioner was indicted at the May 19, 2015, term of the Greenville County Grand Jury for the offenses of criminal sexual conduct in the first degree, kidnapping, and possession of crack cocaine. App. 7, l. 10 – 8, l. 2; App. 416 – 423. His case was called to trial on June 1, 2015, before the Honorable Edward W. Miller, and a jury. Randall Lee Chambers represented appellant. L. Mark Moyer was the assistant solicitor. App. 1.

On June 2, 2015, the jury found petitioner guilty on all three counts. App. 349, ll. 6-14. Judge Miller sentenced appellant to thirty years imprisonment for criminal sexual conduct in the first degree, thirty years for kidnapping, and three years on the cocaine indictment, all sentences were concurrent. App. 354, ll. 2-3.

Petitioner's convictions were affirmed on appeal pursuant to Anders v. California, 386 U.S. 738 (1967), in State v. William Douglas Ziegler, 2016-UP-494 (filed November 23, 2016). App. 373 – 374.

Petitioner thereafter filed an application for post-conviction relief on March 6, 2017. App. 376 – 382. The state filed a return and motion for a more definite statement dated July 28, 2017. App. 383 – 388.

An evidentiary hearing was convened on October 24, 2017, before the Honorable Letitia H. Verdin. Rodney Richey represented petitioner. DeShawn Mitchell was the assistant attorney general. App. 389. Petitioner and Randall Chambers, his trial lawyer, testified during the evidentiary hearing. App. 392 – 409.

Judge Verdin issued an order of dismissal dated May 18, 2018. App. 410 – 415. The order concluded, “Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.” App. 414.

### **Trial Facts**

In his opening statement, defense counsel Chambers told the jury that it was undisputed that the complaining witness, a forty-year-old woman, was “falling-down drunk” when petitioner met her at the Spinx station on White Horse Road in Greenville on the evening of July 12, 2013. App. 72, l. 5 – 73, l. 21. The complainant asked petitioner for a ride home, and petitioner agreed to give her a ride. The complainant was unable to tell petitioner where she lived, and she was behaving erratically. Petitioner ultimately says, “Listen, I’m going to my house.’ And that’s where they went. You will hear that after they got there, and it is agreed upon that they did engage in sexual intercourse. So really, the question becomes whether or not it was consensual intercourse or whether it was as described to you by the solicitor in this case.” App. 73, l. 1 – 74, l. 7.

The solicitor had just told the jury that the complainant was indeed very intoxicated, and she met petitioner at the Spinx station on White Horse Road. She asked petitioner for a ride home and petitioner agreed to give her a ride. The solicitor conversely alleged that petitioner instead took the complainant back to his trailer park against her will, that she ran from him, he caught her, dragged her back to his mobile home, and raped her. The following day, the solicitor said, petitioner drove the complainant to where she said she lived, asked for her phone number, and dropped her off. App. 66, l. 9 – 71, l. 10. The solicitor finally alleged that petitioner had the complainant’s debit card and her work identification card in his wallet when he was arrested. App. 71, ll. 13-15.

The complainant's daughter, Brittany, testified that on July 12, 2013, she was living with her mother in Greenville. Her mother did not drive, so Brittany would take her to work at Columbia Farms chicken farm factory and pick her up. She did so on Friday, July 12, 2013. App. 78, l. 13 – 79, l. 25.

When Brittany picked up the complainant from work, it was about 2:30 or 3:00. They got into an argument about Brittany's driving and the complainant asked Brittany to leave her off near Earle Drive where they used to live. "And she knew six or seven people that lived on that road." App. 80, ll. 1-17.

Brittany testified she was not concerned about dropping her mother off near Earle Drive because they knew people who lived there. However, Brittany did not see the complainant again until 10:30 the next morning. Brittany said her roommate told her, "'Your mom come in, and she didn't look too good.' (sic) And so, I went to check on her." App. 81, ll. 4 – 24.

Brittany said her mother told her: "He raped me," and she had "gravel stuck in her back, scratches all down her back. She had mud all over, big bruises all over her arms and up and down her legs." App. 81, l. 21 – 82, l. 11.

Brittany took her mother to Greenville Memorial Hospital at about 11:00 that morning. App. 82, l. 24 – 83, l. 7. On cross-examination, Brittany said her mother had not been drinking when she left her on Earle Drive that night. Brittany offered that she had tried to call her mother at about 11 pm that evening "but she didn't answer." App. 83, l. 14 – 84, l. 13.

Amber Olson was the SANE nurse at the Greenville Memorial Hospital. App. 84, l. 25 – 85, l. 25. Olson performed the sexual assault kit on the complainant on July 13, 2013, at around 12:30 in the afternoon. App. 89, ll. 11-22. Olson explained also, "There normally is always a

Julie Valentine advocate that comes in just to be able to be there for the patient.” App. 90, ll. 22-25.

Olson referred to the bruises on the complainant as indicating either “some blunt force trauma to the skin or some type of pressure that’s been applied to the skin to make it discolored. App. 92, l. 19 – 95, l. 20.

The complainant testified on the second day of trial, Tuesday, June 2, 2015. She said that she worked at Columbia Farms on Friday, June 12, 2013. She got off work about 2:30 or 3:00, “early,” since it was a Friday. App. 168, ll. 5-25.

The complainant testified while Brittany was driving her home they got into an argument. “I got dropped off at Earle Drive where we had just moved [from] and I know a lot of people.” App. 172, ll. 20-23.

The complainant said her phone had “run out of minutes” so she went to the Walgreens to get a new phone card and then [I] went to the liquor store and bought a bottle of vodka. She drank the entire bottle “sitting on the bench at Walgreens.” App. 173, ll. 3-22.

The complainant admitted she was obviously very intoxicated at this point. She called her son, but he was at work. Then she called her friend, Brian. Brian took her to her friend Jerry’s house. However, Jerry told her: “I couldn’t stay there neither because I was drinking or drunk, whatever.” The complainant then proceeded to Spinx station on White Horse Road. App. 174, ll. 3-23.

The complainant testified that she had an opportunity to review the surveillance tape from the Spinx gas station prior to trial. She testified that she had been dropped off there by another friend, Mitchell who gave her a ride on the back of his moped. Mitchell dropped her at

the Spinx station, apparently rather than taking her home, because he was mad that she would not wear a helmet. App. 176, ll. 1-8.

Referring to the surveillance tape, the complainant recalled: "I got into an SUV, a white one, with a man I didn't know." She indicated to the jury that petitioner was that man, and she confirmed that she had never met him before. App. 176, ll. 9-24.

The complainant told petitioner that she wanted to go to her daughter's home where she lived. She claimed when it was time for him to turn right on the highway, he turned left instead. When she "asked him what he is doing, where are you going, what's going on," she claimed petitioner said: "Shut the fuck up and slide down in the car. And the last thing I seen was the QT's." App. 178, l. 5 – 179, l. 20.

The complainant testified that she was attempting to dial 911 on her phone but she was not able to do so. It was dark outside and when the car stopped inside a trailer park. She got out of the car and ran away. She said she beat on the door of a mobile home. However, no one answered, and then "I took off running." The complainant testified that petitioner caught her, and that she "fought and kicked and whatever I could do to try to show him, you know." Petitioner dragged her by her boots on the ground, she hit her head on a rock, but petitioner eventually got her inside his mobile home. App. 181, l. 7 – 187, l. 6. The complainant said she begged petitioner "please don't do this." She said petitioner started raping her, and she "passed out." App. 187, l. 16 – 189, l. 18.

The complainant said when she woke up the next morning, it was daylight. She went into the bathroom and threw up. Petitioner came in the bathroom and "he asked me was I okay." She said petitioner was acting very differently that morning. "It was very weird." App. 190, l. 1 – 191, l. 4.

The complainant said petitioner brought her shoes and clothes to her, and “he was leaving, and I asked him to give me a ride.” App. 191, ll. 22-24. She said petitioner gave her a ride and “I told him it was my daughter’s house, but it actually wasn’t.” Petitioner asked for her phone number and “I didn’t say anything. I just kept walking.” “[I] went to my room. I passed her other roommate, and he asked me was I okay. And I just said, ‘Yeah.’ But I was crying, and I went to my room. And I couldn’t lay down on the bed. I could just sit up.” App. 192, ll. 3-25.

Brittany took the complainant to the hospital and she remembered they took pictures of her injuries. She was shown a photo lineup at the police department and she picked out photograph number 5, which she said was petitioner, who picked her up at the Spinx gas station and later raped her. App. 193, l. 1 – 202, l. 15.

Petitioner testified in his own defense. He was fifty-four years old, and he was born in Texas. He had lived in South Carolina since he was twelve-years-old. App. 259, ll. 12-22. Petitioner said he had also worked at Columbia Farms until February of 2013, but he did not remember ever meeting the complainant there. App. 259, l. 12 – 260, l. 23.

Petitioner testified on the night in question he went with his girlfriend to the Red Lobster to eat and dropped her off at her house at about 8:30 or 9:00 that evening. Petitioner then went to the Spinx station and “got me some beer and some cigarettes.” “I was headed towards Berea” to “pick up some money for a job I’d done for some plumbing work.” App. 262, l. 2 – 264, l. 2.

However, before he left the Spinx station, suddenly, the complainant “come over there drunk and everything and asked me for a ride, if I would give her a ride. I said, ‘Yes, I’ll give you a ride.’” App. 264, ll. 1-19.

Petitioner said the complainant got in his car, was acting wild, “started kissing and stuff,” and turned his car radio up very loud. He remembered that “she never would tell me where she

was going, so I didn't know where to go." Petitioner went to Berea first to pick up the money he was owed. Petitioner told the complainant he was going home because she would not tell him where to take her. App. 266, l. 1 – 267, l. 14.

Petitioner said he parked, they continued to listen to the radio while he drank beer and smoked a cigarette. He then took out his crack pipe and smoked crack. Petitioner said he told the complainant: "I've got to get to bed to go to sleep . . . And then all of a sudden, she just -- everything went crazy after that." He said the complainant ran across his yard, and she slipped and fell. "I sat there in the van and watched her for a minute, wondering if she was going to be all right." He then took her inside his trailer and "then we ended up having sex." "I don't know how it came about to be about the sex part, but I asked her, 'Could we have sex?' and we did. And that was it. I went back -- I went to sleep. And when I woke up, she was in the bathroom throwing up and stuff." App. 267, l. 4 – 271, l. 17.

Petitioner testified that the complainant consented to having sex and that he dropped her off where she asked to be taken the next morning. App. 271, l. 13 – 272, l. 8.

On cross-examination, petitioner told the assistant solicitor he was reluctant at first to talk to the police when they arrived at the trailer park because he had crack cocaine on his person. App. 279, l. 3 – 281, l. 15. Petitioner also said that he inadvertently must have picked up the complainant's identification card and another item before he put on his glasses the next morning. He did not intend to steal them. App. 292, ll. 5-21.

After about two hours of deliberation, the jury found petitioner guilty on all three counts. App. 347, l. 17 – 349, l. 14. As seen, Judge Miller sentenced petitioner to thirty-year concurrent sentences for criminal sexual conduct in the first degree and kidnapping, and three years on the drug charge.

At the PCR hearing held on October 24, 2017, petitioner repeated that he had consensual sex with the complainant. App. 394, l. 6 – 395, l. 4. Petitioner said unfortunately the only evidence was the complainant’s word against his word because defense counsel did not investigate his case or bring in “a lot of outside information. App. 395, l. 8 – 396, l. 4. Petitioner told the assistant attorney general on cross-examination that he only met with his Defense counsel Chambers one time before he learned they were going to trial. App. 397, l. 25 – 398, l. 4.

Defense counsel Randall Chambers said he had a “somewhat vague memory” of petitioner’s case. He said he investigated the case “to the extent I could . . . I think I was as prepared as possible.” App. 400, l. 22 – 401, l. 2. Chambers said petitioner rejected a twenty-year plea offer and “he told me from the very first time I met him exactly what he testified to today. He’s been extremely consistent in what his story was.” App. 400, l. 15 – 401, l. 25.

Chambers said he thought they did a good job in the defense at trial of demonstrating how erratic the complainant behavior was and “you sum it up pretty well. It was, more or less, her word against his.” App. 402, ll. 1-22.

On cross-examination, Chambers admitted: “*I didn’t do any independent examination, I mean other than driving out to where the crime scene was.*” “I didn’t have anybody take any pictures or anything, which, you know, I’ve done on some cases in the past.” App. 405, ll. 5-15. (emphasis added).

An order of dismissal was issued which noted petitioner testified the sex was consensual, and the complainant said she was raped. App. 412. The order found that “Trial Counsel asked appropriate questions which were relevant to Applicant’s theory of the case, and that Trial Counsel’s pretrial discussions with Applicant were sufficient and were not deficient in any

respect.” The order found petitioner failed to present “*compelling* evidence that counsel committed either errors or omissions in his representation of Applicant.” App. 414. (emphasis added).

## ARGUMENT

Defense counsel provided ineffective assistance of counsel where he candidly admitted he did not do any independent investigation in this case, since counsel had a duty to investigate all circumstances which supported petitioner's testimony that the sexual encounter was consensual after the complainant asked petitioner for ride.

It was undisputed that the complainant was very intoxicated that night when she asked petitioner for a ride. The complainant testified she wanted petitioner to take her home, and he instead took her to the trailer park where he lived, dragged her to his trailer after she ran away, and he raped her repeatedly.

Petitioner testified the complainant was acting erratically, she had asked him for a ride, and that the sex at his trailer was consensual. It was undisputed that he gave her a ride and dropped her off the next morning.

“Without a doubt, a criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” Thompson v. Wainwright, 787 Fed.2d. 1447, 1450, (11th Cir. 1986); Strickland v. Washington, 466 U.S. 668, 691 (1984). Further, counsel at every stage has an obligation to conduct a thorough and **independent investigation relating to the case**. See Ard v. Catoe, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007). An attorney's function is to make the adversarial testing process work in a particular case, and the ABA guidelines recommend that an independent investigation be an aggressive reexamination of the state's forensic and other evidence. See Strickland v. Washington, 466 U.S. at 690.

In Ard v. Catoe, this Court found that trial counsel's decisions regarding the investigation and the failure to challenge the gunshot residue evidence were unreasonable and deficient. This

Court found there was ample probative evidence to support the PCR court's finding of deficient performance. Ard v. Catoe, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007).

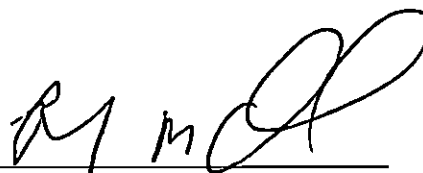
Here, as seen, defense counsel admitted he did not do any independent investigation. Counsel apparently reasoned this case was just petitioner's word against the respondent's word, and it was up to the jury to decide who was telling the truth. However, the failure to adequately and independently investigate in a non-capital or a capital case cannot be justified. Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008).

Simply allowing the jury to hear petitioner's word against the alleged victim's word almost did not even require an attorney. It was a failure to provide an adversarial challenge to the state's case. See Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006).

Defense counsel was deficient in this case, and petitioner was prejudiced when applying the correct "preponderance of the evidence standard." As seen, the PCR judge erroneously found petitioner had failed to present "compelling evidence" of trial counsel's deficiency even though counsel admitted he conduct no independent investigation. With the correct standard applied, petitioner should be granted a new trial for ineffective assistance of counsel under these circumstances. See Strickland v. Washington, *supra*.

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of January, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

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WILLIAM DOUGLAS ZEIGLER,

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V.

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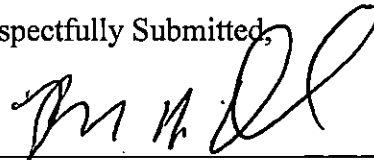
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for William Douglas Zeigler states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
  2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Letitia H. Verdin, which was held on October 24, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
  3. He 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 him as counsel for William Douglas Zeigler.

Respectfully Submitted,



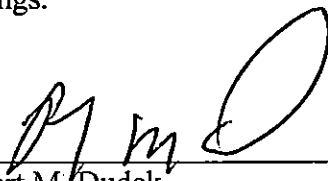
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Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 11th day of January, 2019.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his 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."



Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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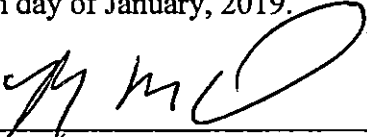
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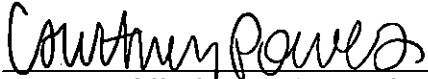
RESPONDENT

\_\_\_\_\_  
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 in the above referenced case has been served upon Megan Harrigan Jameson, 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 William Douglas Zeigler, #154981, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 11th day of January, 2019.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 11th day of January, 2019.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.