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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Edgar W. Dickson, Circuit Court Judge

TIMOTHY JAMES WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000969

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the post-conviction relief (PCR) judge err by finding trial counsel was not ineffective when he failed to request a jury instruction on the defense of accident when there was evidence to support the charge, or for not placing such a request on the record thereby failing to preserve the issue for appellate review, and where Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of Petitioner's trial would have been different if the jury was properly charged on accident?

STATEMENT OF THE CASE

On February 16, 2013, Petitioner shot and killed his girlfriend, Melinda Ford. The state charged Petitioner with murder. However, Petitioner maintained it was an accident. Petitioner and Ford had been dating for about seven or eight months. App. 415, ll. 6-12. Petitioner eventually moved in with Ford and her three children. App. 415, ll. 23-25.

On the evening of the shooting, Petitioner returned home after running errands. He warmed up some leftover food and went to his bedroom to eat. App. 416, l. 6 – 417, l. 10. While he was in the bedroom, Ford and her fifteen year old daughter, Kadasha, arrived home after a day of shopping. App. 417, ll. 11-15. Ford came into the bedroom. She was “frustrated” because “people” were “making comments to her” about her and Petitioner’s relationship. App. 417, l. 24 – 418, l. 2. After Ford and Petitioner talked for several minutes, Petitioner decided “the best thing” for him to do was to move out of the home. App. 418, ll. 3-12. He went to the kitchen and grabbed several trash bags to pack his clothes. While in the kitchen, Petitioner told Kadasha, “I’m done. I am going.” Petitioner returned to the bedroom and “started packing [his] things.” App. 418, l. 14 – 419, l. 4. His clothing was all on hangers. He shoved the clothing, with the hangers included, into several trash bags. App. 419, ll. 5-13.

Petitioner was an avid hunter and stored several firearms in the closet behind a dresser in the bedroom he shared with Ford. App. 419, ll. 10-18. As he was packing, he grabbed his shotgun that was hidden behind the dresser. App. 421, ll. 14-18. While he was packing, Ford was in the bedroom, but she eventually left to use the bathroom. App. 421, ll. 10-13. After Ford left the room, Petitioner “scrambled around the room a little bit more.” App. 422, ll. 2-5. He then grabbed two trash bags full of clothing as well as his shotgun and walked outside to put the stuff in his truck. As he was trying to open the door to the truck with his hands full, the “shotgun

went off.” App. 422, ll. 2-14. Petitioner explained, “I had two bags in my hand, the shotgun in my hand. And I went to go use one hand and kick the handle open to release the door. And when I released the door I used the other hand to kind of swing the door open.” App. 422, ll. 6-14. In the process, the “shotgun went off.” App. 422, ll. 13-14. Petitioner believed “one of the hangers snagged the trigger as [he] was swinging the door open.” App. 444, ll. 10-13. He denied pulling the trigger and maintained “it was an accident.” App. 443, l. 16 – 444, l. 22. When the shotgun went off, it “scared” Petitioner and he dropped the bags in his hands. He then heard Ford call his name. App. 422, l. 18 – 423, l. 1-6. Petitioner turned and saw Ford lying on the ground. App. 423, ll. 7-10. He did not know she was outside. App. 422, ll. 20-25.

Petitioner walked over to Ford and asked her why she was on the ground. Ford told Petitioner she had been shot. Petitioner dropped to the ground. He tried to pick Ford up, but she told him no because it was too painful. App. 423, ll. 7-19. Petitioner called Ford’s daughter, Kadasha, who eventually came outside. Kadasha never asked anything. “She just started hollering, screaming.” App. 423, l. 20 – 424, l. 3. Petitioner told her to go inside and call 911. After Kadasha ran back inside, Petitioner became “emotional.” He started crying. It was very difficult for him to see someone he loved on the ground “with a gunshot wound like that.” App. 424, ll. 8-15. When Kadasha came back outside, Petitioner “held the gun out and said Kadasha just shoot me.” However, Kadasha refused. She never touched the gun. App. 424, ll. 16-23.

After seeing the “hurt in her [Kadasha’s] eyes,” Petitioner “went off to the side and . . . just pulled the trigger on [him]self.” App. 424, l. 24 – 425, l. 5. After he shot himself, Petitioner heard Ford cry out, “Oh, no.” Petitioner walked back over to her and explained what he had done. He was still “hurting from what had happened to her [Ford]” and shot himself a second time. App. 425, ll. 6-16. He then went and laid down next to Ford. As he was holding her, he

realized there was “no tension to her leg.” App. 425, ll. 17-23. He continued to lie on the ground, crying and talking to Ford. Meanwhile, Kadasha ran to the neighbor’s house and the two called 911. App. 426, ll. 2-6. Ford, who had a single shotgun wound to the back, died of her injuries before emergency medical services arrived. App. 215, ll. 2-14.

A Charleston County Grand Jury indicted Petitioner on June 3, 2013 for murder and possession of a weapon during the commission of a violent crime. App. 707-710. His case was called to trial on February 2, 2015 before the Honorable J.C. Nicholson, Jr., and a jury. App. 1. Assistant Solicitors Jennifer Shealy and Ted Corvey represented the state, and Ted Smith and Martha Runey represented Petitioner. App. 1. The jury found Petitioner guilty as indicted. App. 525, l. 17 – 526, l. 2. He was sentenced to life without parole for murder and five years concurrent for the weapons offense. App. 547, ll. 15-21.

The Court of Appeals affirmed Petitioner’s conviction and sentence. State v. Wright, 2017-UP-448 (S.C. Ct. App. filed December 6, 2017); App. 604-605.

On September 4, 2018, Petitioner filed an application for post-conviction relief (PCR). App. 606-612. The state filed a return to this application dated January 10, 2019. App. 613-619. With the assistance of counsel, Petitioner filed an amended application on May 6, 2019. App. 620-621. An evidentiary hearing was held on January 21, 2020 before the Honorable Edgar Dickson. App. 622. Assistant Attorney General Sara Gunton represented the state, and James Falk represented Petitioner. App. 622.

William Ted Smith, Petitioner’s trial counsel, testified that he requested the trial court charge the jury on the lesser included offense of involuntary manslaughter and on the defense of accident. While the court refused to charge accident, it agreed to charge involuntarily manslaughter. App. 629, l. 12 – 630, l. 6; App. 631, ll. 21-22; App. 649, ll. 2-11. Smith believed

there was evidence to support a charge on accident based on Petitioner’s testimony. App. 630, ll. 7-9; App. 658, ll. 16-21. He admitted he failed to preserve his request to charge accident for appellate review because the charge conference took place off the record and he did not object to the charge that was given to the jury. App. 631, l. 21 – 632, l. 5. Despite the trial court’s refusal to charge accident, Smith testified that he was “okay with” the charge that was given because he did not think the jury would find Petitioner “not guilty by reason of accident alone.” However, Smith believed it was possible the jury could have acquitted Petitioner of murder and found him guilty of only the lesser included offense of involuntary manslaughter. App. 649, l. 17 – 650, l. 1; See App. 657, ll. 1-6.

By order filed July 7, 2022, the PCR judge denied Petitioner relief.¹ App. 680-706. The judge found trial counsel credibly testified that he requested a charge on accident during an off the record charge conference but the trial court refused the request and only charged the lesser included offense of involuntary manslaughter. App. 701. The PCR judge determined counsel was not deficient for failing to preserve his request to charge accident for appellate review. App. 701. The judge further found Petitioner was not prejudiced by counsel’s failure to request a charge on accident or preserve the request for appellate review because “the jury was able to hear [Petitioner’s] alleged testimony about the incident surrounding the shooting, but there was also conflicting information about whether or not the shooting was indeed an accident.” App. 701. Notably, the PCR judge did not find there was no evidence to support the charge.

¹ Despite denying Petitioner relief, the PCR judge vacated Petitioner’s five year sentence for possession of a weapon during the commission of a violent crime pursuant to S.C. Code Ann. § 16-23-490 because Petitioner was sentenced to life without parole for murder, the principle crime. App. 704-705.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated by trial counsel's deficient performance, this petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief (PCR) judge erred by finding trial counsel was not ineffective when he failed to request a jury instruction on the defense of accident when there was evidence to support the charge, or for not placing such a request on the record thereby failing to preserve the issue for appellate review, and where Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of Petitioner's trial would have been different if the jury was properly charged on accident.

Trial counsel was deficient for failing to request a jury instruction on the defense of accident when there was evidence to support the charge, or for failing to place his request on the record, thereby failing to preserve the issue for appellate review. Petitioner credibly testified before the jury that he accidentally shot the decedent as he attempted to put his possessions, including his shotgun, in his truck. Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of his trial would have been different if the jury was properly charged on accident. Additionally, if counsel had properly preserved his objection for appellate review, there is a reasonable probability the appellate court would have reversed Petitioner's conviction based on the trial court's error in failing to charge accident when it was supported by the evidence.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner 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. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

“The law to be charged to the jury is determined by the evidence presented at trial.” State v. Brewton, 437 S.C. 44, 55, 876 S.E.2d 141, 147 (Ct. App. 2022) (quoting State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004)) (internal quotation marks omitted); See State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “If there is any evidence to support a jury charge, the trial [court] should grant the request.” Id. (quoting Brown, 362 S.C. at 262, 607 S.E.2d at 95) (alteration in original) (internal quotation marks omitted). “When reviewing the trial court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011) (citing State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000)).

“For a homicide to be excusable on the ground of accident, it must be shown that the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon.” Brewton, 437 S.C. at 55, 876 S.E.2d at 147 (quoting State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009)) (internal quotation marks omitted); See State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011).

In this case, in the light most favorable to Petitioner, there was evidence to support a charge on accident. Petitioner testified that the killing was unintentional—the “shotgun went off” as he was trying to open the door of his truck with two trash bags full of clothing and his shotgun in his hands. Petitioner believed a hanger snagged the trigger of the gun. Moreover, Petitioner was acting lawfully at the time of the killing. He testified that he was outside the home he shared with Ford and was merely attempting to load his belongings into his truck when the gun discharged. Lastly, Petitioner was exercising due care in the handling of the shotgun when the shooting occurred. He was not waving it around recklessly or negligently playing with the firearm. He was simply trying to open the door of this truck with his hands full.

Trial counsel agreed there was evidence to support a charge on accident. He testified at the evidentiary hearing that he requested a charge on accident during an off the record charge conference. However, he admitted he failed to place his request on the record and failed to object to the jury instructions when asked if he had any exceptions to the charge. See App. 523, ll. 3-5. Consequently, counsel was deficient for failing to request the trial court charge the defense of accident on the record, thereby failing to preserve the issue for appellate review.

Petitioner was prejudiced by counsel’s deficient performance because there is a reasonable probability the outcome of his trial would have been different if the jury had been properly instructed on the defense of accident. Petitioner credibly testified that the shooting was an accident and that the shotgun merely “went off” as he was trying to load it into his truck. He did not even know Ford was outside at the time. Additionally, for the same reason, if counsel had properly preserved the issue for appellate review, there is a reasonable probability the appellate court would have reversed Petitioner’s conviction based on the trial court’s error in failing to charge accident when it was supported by the evidence.

Respectfully, this Court should hold trial counsel was ineffective, reverse Petitioner's conviction, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2023.