ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

William Jeffrey Young, Circuit Court Judge

LAMONT RAPHAEL BRIGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213670

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to request a jury charge on the law of involuntary manslaughter in the case because petitioner's trial testimony that "the gun went off"[1] supported such a charge.[2]

[1] App. p. 158, lines 3-5.

[2] In the brief of appellant filed on appeal, appellate counsel noted that "for some reason defense counsel did not request a charge of involuntary manslaughter even though [petitioner] testified that [Wesley House] walked into the gun, and the gun went off...and [petitioner] didn't know it was going to go off." See Supp. Appendix p. 5.

STATEMENT

Petitioner Lamont Raphael Briggs was convicted of murder and possession of a firearm during the commission of a violent crime per jury trial held during the March 2006 term of the Clarendon County General Sessions Court before Judge John M. Milling. Petitioner was sentenced to imprisonment for an aggregate period of thirty-seven years. App. 1-246. Harry L. Devoe represented petitioner at trial.

Petitioner appealed, but his convictions and sentences were affirmed by the South Carolina Court of Appeals. See State v. Briggs, Op. No. 2008-UP-515 (S.C. Ct. App. filed September 8, 2008). Petitioner was represented on appeal by Joseph L. Savitz, III.

On January 13, 2009, petitioner filed a PCR application with the Clarendon County Office of the Clerk of Court. App. 248-288. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 289-293.

A PCR hearing was held on October 27, 2010, at the Clarendon County Courthouse before Judge W. Jeffrey Young. App. 295-314. Petitioner was present at the hearing and represented by Charles T. Brooks. On December 11, 2012, Judge Young issued an order of dismissal in the case. App. 316-324.

Petitioner appealed Judge Young's order of dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to request a jury charge on the law of involuntary manslaughter in the case because petitioner's trial testimony that "the gun went off"[3] supported such a charge.[4]

This case began on September 5, 2005, when one crack cocaine seller, i.e. Wesley House, became angry when a buyer preferred to do business with petitioner, who was also selling crack at the same time, date, and location (trailer park in Summerton, South Carolina) along with House. The state's case was comprised of only three witnesses: eyewitness Dominque Lawson, forensic pathologist Dr. Susan Presnell, and Investigator Sergeant Cullen. Petitioner testified in his defense at trial.

Eyewitness Dominque Lawson testified that when petitioner drove up into the trailer park in Summerton on September 5, 2005, Wesley House approached petitioner immediately and asked "what's up." Lawson stated that petitioner responded by pulling out a shogun from the trunk of his car and shooting House. App. 45, l. 2-p. 57, l. 8.

Sergeant Cutler testified that his investigation into the matter revealed that a prior confrontation occurred between petitioner and House on that day before the shooting occurred. Sergeant Culler explained that House had previously stolen crack from petitioner's possession (which petitioner intended to sell) in anger after a customer preferred to buy crack cocaine from petitioner only. Thereafter, petitioner left the scene, but returned with a shotgun. App. 76, l. 18-p. 84, l. 23. Dr. Susan Presnell stated that House died from a single gunshot wound to the abdomen.

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[3] App. p. 158, lines 3-5.

[4] In the brief of appellant filed on appeal, appellate counsel noted that "for some reason defense counsel did not request a charge of involuntary manslaughter even though [petitioner] testified that [Wesley House] walked into the gun, and the gun went off...and [petitioner] didn't know it was going to go off." See Supp. Appendix p. 5.

Petitioner testified in his defense at trial. Petitioner testified that he and House both were attempting to sell crack cocaine at the trailer park on the date in question when a customer placed an order to buy from him (petitioner) instead of House. Petitioner explained that after he made the sale, House robbed him of the remainder of his crack cocaine. Petitioner explained further that he departed thereafter, but that when he returned to the trailer park hours later, House, who held a stick, accosted him and acted like he wanted to fight. Petitioner stated that he became fearful as House kept advancing, making threatening gestures, and screaming "f--- that" all at once. Petitioner stated that he responded by pulling out his gun, and that House walked into the gun and the "[gun] went off." App. 158, lines 3-8; App. 124, l. 18 – p. 141, l. 7; App. 142, l. 4 -p. 153, l. 21.

The trial judge charged the jury on the law of self-defense and voluntary manslaughter. App. 222, l. 9 – p. 226, l. 21. Trial counsel did not request a jury charge on the law of involuntary manslaughter at trial. Note that in the brief of appellant filed on appeal, appellate counsel asserted on the statement page that "for some reason defense counsel did not request a charge on involuntary manslaughter even though [petitioner] testified [thatWesley House] walked into the gun, and the gun went off...[and petitioner] didn't know it was going to go off." See Supp App. p. 5.

At the PCR hearing, petitioner complained about how counsel handled the issue of the lesser included offenses in the case. App. 302, l. 1-6. Trial counsel testified at the PCR hearing that this was a case of either voluntary manslaughter or self-defense. App. 311, lines 6-7.

The PCR judge ruled (per order heading of "fail[ure] to request a charge") that counsel's conduct did not fall below the reasonable standards of representation in the case. App 322-333.

To be entitled to a charge on involuntary manslaughter, there must be evidence that the defendant either killed another without malice and unintentionally, but while engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause

death or great bodily harm, **or** that the killing of another was without malice and unintentional, but while acting lawfully with reckless disregard of the safety of others. State v. Burriss, 334 S.C. 256, 513. S.E.2d 104 (1999). Also in Burriss, the Court held that a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he were entitled to arm himself in self-defense at the time of the shooting, because this would render said act (arming oneself) lawful within the meaning of the definition of involuntary manslaughter. The defendant in Burriss was pushed to the ground by the victim and another man during an attack against him, and when he drew a gun and fired into the ground to stop their advance toward him, one aggressor was killed by gunfire as the other two continued their advancement.

Here, petitioner armed himself in self-defense and acted in self-defense because he was frightened as House continued to advance toward him in an unfriendly manner while holding a stick in the air, making threatening gestures and comments, and refusing to back off when asked to do so. Petitioner had nowhere to turn or run. App. 134, l.1 - p. 136, l. 24; App. 157, l. 18-24; App. 158, l. 1 - p. 162, l.15; App. 166, lines 1-3. Note also that House walked into the shotgun held by petitioner. App. 162, l. 25-p. 163, l. 1. Petitioner stated that he did not mean to pull the trigger and that the gun went off. App. 136, lines 16-18; App. 158, lines 3-5. Thus, petitioner killed without malice and unintentionally while acting in self-defense, which meant he was acting unlawfully by being in possession of a weapon, but he acted lawfully while arming himself in defense. Therefore, the killing was sans malice, but while engaged in the commission of some unlawful act (possession of a weapon) not amounting to a felony (act of self-defense).

Compare State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), where the court held that the defendant armed himself in self-defense and was entitled to do so when confronted by a jealous girlfriend who held a long brown strand of hair and a pointed .22 rifle while screaming and

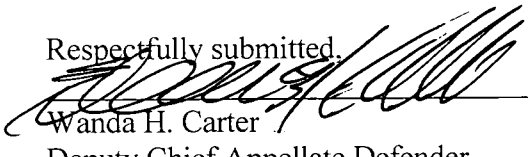
suggesting infidelity, which in turn moved him (defendant) to grab the gun that fired shortly after a struggle and killed the girlfriend. Compare also, State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003), where the defendant lawfully armed himself in self-defense and was entitled to do so when he tried to break up a fight between three women and fired his gun when the boyfriend of one of the women charged keep advancing toward him (defendant). See also State v. Brayboy, 387 S.C. 174, 691 S.E.2d 482 (2010), where the Court held that the defendant lawfully armed himself in self-defense and was entitled to do so when he managed to retrieve the gun after his girlfriend with whom he was arguing dropped the gun she had in her possession and when the gun fired as he swung it up after his girlfriend "got in his face."

The law to be charged is determined form the evidence presented at trial. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2005). In the case at bar, counsel's failure to request a charge on the law of involuntary manslaughter at petitioner's trial constituted deficient legal representation in petitioner's case, and but for counsel's error in this regard, a reasonable probability exists that the outcome of petitioner's trial would have been different had involuntary manslaughter been charged. Counsel's ineffective assistance of counsel in this regard violated appellant's right to competent legal representation at trial guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. See Strickland v. Washington 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of July, 2013.

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CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Lamont Raphael Briggs, # 314499, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 8th day of July, 2013.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of July, 2013.

(L.S.)

Notary Public for South Carolina
My Commission Expires: November 16, 2022.