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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Cordell Maddox, Jr., Circuit Court Judge

TARA MARIE WEBER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001228

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT OF THE CASE 2

ARGUMENT

The post-conviction relief (PCR) court erred by finding trial counsel was not ineffective when counsel refused the trial judge’s offer to instruct the jury on self-defense, which the judge ruled was supported by the evidence presented, because it was in conflict with the defense theory of accident, since there is a reasonable probability the outcome of Petitioner’s trial would have been different if self-defense had been properly charged to the jury. 8

CONCLUSION 11

ISSUE PRESENTED

Did the post-conviction relief (PCR) court err by finding trial counsel was not ineffective when counsel refused the trial judge's offer to instruct the jury on self-defense, which the judge ruled was supported by the evidence presented, because it was in conflict with the defense theory of accident, since there is a reasonable probability the outcome of Petitioner's trial would have been different if self-defense had been properly charged to the jury?

STATEMENT OF THE CASE

Petitioner was charged with voluntary manslaughter after she stabbed her boyfriend Kyle Way during the early morning hours of December 31, 2010. Petitioner and the decedent lived together with their two young children in a mobile home. On the morning of the stabbing, the decedent found Petitioner in an abandoned trailer about fifty feet from the home they shared with another man, Dustin Roberts. App. 174, ll. 12-16. Petitioner and Roberts had an “on and off” relationship. Roberts admitted he and Petitioner had sex that morning in the abandoned trailer. App. 171, ll. 2-24. After they had sex, Petitioner and Roberts went to sleep. Roberts may have had boxers on and Petitioner was not wearing “much.” App. 172, ll. 15-19.

While Petitioner and Roberts were sleeping, the decedent came into the trailer, grabbed Petitioner, and dragged her out. Roberts heard Petitioner and the decedent arguing and bickering back and forth. However, he went back to sleep and did not intervene. App. 172, l. 3 – 173, l. 2. Roberts found out what happened when he woke up later that morning. App. 173, ll. 5-9.

Roberts explained that while he and the decedent were not friends, they had never fought before. There was a “good possibility” that Roberts fathered Petitioner’s youngest child and not the decedent. However, the decedent took care of Petitioner and both children. According to Roberts, that was the extent of Petitioner’s relationship with the decedent. The decedent was merely Petitioner’s provider and the two shared a son. App. 174, l. 17 – 175, l. 2.

Kimberly Powell lived with Petitioner and the decedent at the time. Powell’s then boyfriend Joshua Ayers was with Powell the morning of the stabbing. Powell testified that she and Ayers went to bed sometime between midnight and one o’clock that morning. They woke up to sounds of Petitioner and the decedent arguing. Powell first heard them in the yard “screaming and yelling.” Then she heard them arguing in the kitchen. She claimed she heard

Petitioner say “a couple of times” “that if he [the decedent] didn’t leave her alone that she was going to stab him.” App. 162, l. 24 – 164, l. 2.

Petitioner eventually came running into Powell’s room followed a couple of seconds later by the decedent. The decedent was “pouring blood.” Petitioner frantically yelled for Powell to call 911. App. 164, ll. 3-12. Powell told dispatch the decedent “had got cut” and needed help. App. 167, ll. 16-22.

Joshua Ayers testified that he woke up when he heard Petitioner and the decedent arguing. They were arguing on the other side of the house. Like Powell, Ayers claimed he heard Petitioner say “if you don’t leave me alone I’m going to stab you.” App. 156, ll. 17-23. Two minutes later, Petitioner came into Powell’s room yelling, “Call 911.” The decedent was right behind Petitioner. The decedent “was holding himself” and “all [Ayers] could see was blood.” App. 154, l. 22 – 155, l. 22. Ayers held a white shirt to the decedent’s wound until paramedics arrived. The only thing the decedent said to Ayers was “he wanted a cigarette.” App. 155, l. 24 – 156, l. 16.

Officer Kevin Smith with the Ridgeland Police Department was the first officer to arrive on scene. App. 143, ll. 11-12. Petitioner immediately approached Smith in the yard and began explaining what happened. App. 141, l. 22 – 142, l. 4. According to Smith, Petitioner “said that she was in the kitchen, and she’d been holding a knife, and she was planning to cut herself with the knife; and Mr. Way [the decedent] had come behind her to get the knife, and she turned around; and in the process of turning around, she said that she had accidentally stabbed him.” App. 144, l. 23 – 145, l. 3. Smith told Petitioner that he was only there “to secure the scene for EMS” and she needed to wait to talk to the responding deputy from the sheriff’s office. App. 145, ll. 4-9. Smith then went inside the mobile home and found the decedent leaning against a

couch. Another man was holding a rag to the decedent's chest, which was soaked with blood. App. 142, ll. 7-12.

The decedent ultimately died while enroute to the hospital. He was already in shock from extreme blood loss by the time paramedics arrived. He suffered a single stab wound to the chest just below his collarbone that severed the left subclavian artery. App. 115, ll. 1 – 24; App. 132, ll. 21-24; App. 248, l. 3 – 249, l. 24. The only words the decedent spoke to the paramedics were, “I am dying. Tell my kids I love them.” App. 122, ll. 22-24; App. 134, ll. 12-16.

Responding deputies found a “steak knife” with blood on it in the kitchen sink under some dishes. It was collected and placed into evidence. App. 185, l. 18 – 187, l. 8; App. 207, l. 25 – 208, l. 23. Deputy Raymond Moran asked Petitioner on scene what happened. Petitioner likewise told Moran that “she went to the kitchen, she got a knife and she was saying she was going to hurt herself, and that Kyle [the decedent] came up behind her telling her to give him the knife. So she finally turned around and . . . was trying to hand him the knife and as he reached for the knife, the knife . . . stabbed him in the shoulder.” App. 181, l. 17 – 182, l. 2.

Petitioner later gave a third statement to Detective Jeff Crosby after she was transported to the Jasper County Sheriff's Office. This statement, which was consistent with her prior statements, was audio recorded and played for the jury. App. 224, l. 8 – 230, l. 17. Petitioner did not testify at trial.

The defense theory at trial was that Petitioner accidentally stabbed the decedent. A charge conference was held in chambers off the record. The trial judge agreed to charge the lesser included offense of involuntary manslaughter and the defense of accident. App. 298, ll. 5-12. The judge stated on the record that there “was a snippet of testimony that was – seemed to indicate that – just a bare snippet of testimony that would – might could substantiate a self-

defense charge. That was discussed in chambers and we came to the conclusion that it was not a theory of the defendant that it was self-defense, that it was an accidental incident that took place. And more importantly, it's not consistent with what the defendant said, who was the only witness to the altercation. And as a result of that, although it had been discussed, the charge of self-defense is not in the charge." App. 298, ll. 13-23. Trial counsel agreed this was the "defense's position." App. 298, l. 23 – 299, l. 1.

A Jasper County grand jury indicted Petitioner on August 23, 2011 for voluntary manslaughter. App. 481. Her case was called to trial on September 12, 2011 before the Honorable Michael G. Nettles, and a jury. App. 1. Assistant Solicitors Robert Ferguson and Tameka Legette represented the state. Robert Hughes represented Petitioner. App. 1. On September 14, 2011, the jury found Petitioner guilty as indicted. App. 328, ll. 20-25. Petitioner was sentenced to twenty-three years imprisonment. App. 338, ll. 8-11.

The Court of Appeals dismissed Petitioner's appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Weber, 2013-UP-042 (S.C. Ct. App. filed January 30, 2013); App. 352-353. On May 6, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 354-359. The state filed a return to this application dated June 5, 2014. App. 360-363. An evidentiary hearing was convened on July 30, 2014 before the Honorable J. Cordell Maddox, Jr. App. 364. Assistant Attorney General Ashleigh Wilson represented the state. App. 364. Tristan Shaffer represented Petitioner. App. 364.

Robert Hughes, Petitioner's trial counsel, testified that he refused the trial judge's offer to charge self-defense because it was incompatible with Petitioner's defense of accident. Hughes explained, "I was going for an accident defense, and the hardest thing to explain to a jury is it was an accident but if it wasn't an accident she did it in self-defense. . . . I did not want the jury

to have the idea that she did it on purpose. There was not enough [evidence], including her testimony, that [the killing] was in self-defense. So, having a self-defense charge in there, especially if I tried to argue it in closing, would have basically admitted to the jury that it wasn't an accident and I was going for an accident defense which is what she told me." App. 373, l. 3 – 374, l. 3. However, Hughes later admitted that he did not have to argue self-defense to the jury during his closing merely because the trial judge was going to charge the jury with the defense. App. 374, ll. 9-16. He also acknowledged that if the jury did not believe Petitioner's claim that the killing was an accident, it would have been able to consider whether Petitioner acted in self-defense if Hughes had accepted the judge's offer to charge self-defense to the jury. App. 374, l. 17 – 375, l. 1.

By order filed May 1, 2017, the PCR court denied Petitioner relief. App. 407-414. The court found Petitioner failed to prove trial counsel was ineffective for not accepting the trial court's offer to charge the jury on self-defense. The PCR court determined trial counsel articulated a valid trial strategy for not requesting a self-defense instruction. The court emphasized that Petitioner's defense was accident based on her statements to law enforcement. App. 409. Petitioner told law enforcement that she retrieved a knife and was threatening to cut herself when the decedent attempted to take the knife from her. As the decedent attempted to take the knife, Petitioner tried to hand the knife to the decedent, and somehow the knife went into the decedent's shoulder. App. 409.

In support of its decision, the PCR court also cited to trial counsel's testimony that he chose to avoid a self-defense instruction because he thought it would be difficult for the jury to understand two conflicting theories of how the killing took place. Counsel did not want the jury to consider the possibility that Petitioner intentionally stabbed the decedent to defend herself

when her defense was that she did not mean to kill him and the stabbing was an accident. App. 410. The PCR court further found there was no evidence of self-defense presented at trial to support a self-defense instruction. App. 410-411.

On August 7, 2017, Petitioner filed a notice of appeal with this Court. On March 14, 2018, Petitioner filed a petition for writ of certiorari and accompanying appendix with this Court challenging the denial of her application for post-conviction relief. App. 415-424. The state filed a return to this petition on July 30, 2018. App. 425-440. By order dated August 13, 2018, this Court transferred the appeal to the Court of Appeals pursuant to Rule 243(l), SCACR. App. 441. By order filed July 2, 2019, the Court of Appeals dismissed the appeal because Petitioner failed to timely serve the notice of appeal as required by Rule 243, SCACR. App. 442.

On August 6, 2019, Petitioner filed a second application for post-conviction relief seeking a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 443-449. The state filed a return to this petition on December 8, 2020. App. 450-459. An evidentiary hearing was held on July 20, 2022 before the Honorable Kristi Curtis. App. 460. Assistant Attorney General Lauren Mims represented the state. James Falk represented Petitioner. App. 460. By order filed July 6, 2023, the PCR court granted Petitioner a belated appeal. App. 473-480. The court found Petitioner desired appellate review from the denial of her first application for post-conviction relief but the appeal was dismissed based on her counsel's failure to timely file the notice of appeal. App. 479.

This petition for writ of certiorari pursuant to Austin v. State follows.

ARGUMENT

The post-conviction relief (PCR) court erred by finding trial counsel was not ineffective when counsel refused the trial judge's offer to instruct the jury on self-defense, which the judge ruled was supported by the evidence presented, because the charge was in conflict with the defense theory of accident, since there is a reasonable probability the outcome of Petitioner's trial would have been different if self-defense had been properly charged to the jury.

Trial counsel was ineffective for refusing the trial judge's offer to instruct the jury on self-defense, which the judge ruled was supported by the evidence presented, merely because the charge was in conflict with the defense theory of accident. Counsel acknowledged at the evidentiary hearing that he did not have to argue Petitioner acted in self-defense during his closing argument simply because the charge had been given to the jury. Self-defense was an alternative theory supported by the evidence that should have been considered by the jury. There is a reasonable probability the outcome of Petitioner's trial would have been different if self-defense had been properly charged to the jury.

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).

“To establish self defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.” State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000) (citing State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999)). “If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge’s refusal to do so is reversible error.” Id. at 416, 535 S.E. at 434 (citing State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984)).

The evidence presented at trial was that the decedent was angry after he discovered Petitioner in bed with another man a mere fifty feet from the home they shared with their children. The decedent aggressively dragged Petitioner home and argued with her. Petitioner plainly felt threatened as the only two witnesses in the house testified that Petitioner yelled, “If

you don't leave me alone, I'm going to stab you." Petitioner and the decedent were inside their kitchen and Petitioner had no way to avoid the danger but to act as she did.

Given that there was evidence to support a self-defense charge, trial counsel was deficient for refusing the judge's offer to instruct the jury accordingly. Moreover, Petitioner was prejudiced by counsel's deficient performance. A jury may believe or disbelieve evidence in whole or in part. See State v. Johnson, 236 S.C. 207, 113 S.E.2d 540 (1960). Thus, if the jury disbelieved the defense of accident, there is a reasonable probability it would have acquitted Petitioner based on self-defense.

Respectfully, this Court should reverse the decision of the PCR court 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 on the issue presented. Petitioner ultimately requests this Court reverse her conviction and remand for a new trial.

Respectfully submitted,

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

ATTORNEY FOR PETITIONER

This 20th day of December, 2023.

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TARA MARIE WEBER,

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RESPONDENT

APPELLATE CASE NO. 2023-001228
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari Pursuant to Austin v. State in the above referenced case has been served upon Danielle E. Dixon, Esquire, at her primary email address listed in the Attorney Information System (AIS); and upon Tara Marie Weber, #347905, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 20th day of December, 2023.

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

ATTORNEY FOR PETITIONER