STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

The Honorable Deadra L. Jefferson, Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge
Lower Case No. 2016-CP-23-7610

WILLIE MARVIN WILLIAMS,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

Appellate Case No. 2020-000796

BRIEF OF PETITIONER

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PETITIONER'S STATEMENT OF THE ISSUE

I.

Did the PCR court err in finding Williams' defense attorneys were constitutionally ineffective for not objecting to the trial court's jury instruction on mutual combat when the PCR court's finding that Williams suffered prejudice was erroneously based on the assumption that Williams was entitled to a self-defense instruction and when the PCR court's findings as to this issue contradict its other findings?

II.

Did the PCR court err in not restricting its grant of post-conviction relief to the murder conviction only when that is the offense tried that could have been affected by the mutual combat instruction and, in the alternative, from refusing to clarify to which convictions the grant of relief was meant to apply?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Respondent Williams in April of 2013 for murder and possession of a weapon during the commission of a violent crime (2013-GS-23-3238); attempted murder (2013-GS-23-3239), and unlawful conduct towards a child (2013-GS-23-3240). W. Townes Jones, IV, Esquire, and Richard H. Warder, Esquire, represented him on the charges. A jury trial was held May 13-16, 2013, with the Honorable Deadra L. Jefferson presiding. The jury convicted as charged. Judge Jefferson sentenced Williams to life for the murder, thirty years for attempted murder, and ten for unlawful conduct towards a child. (App. 677). She also imposed five years, suspended to time served, on the weapons charge given that Williams had already served over a thousand days of time, and "under certain circumstances, the possession of a firearm charge is inapplicable...." (App. 677). Williams timely appealed.

Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed a Final Brief of Appellant on January 26, 2015, in this Court and raised the following issues:

> 1.
>
> In a case where both voluntary and manslaughter and self-defense were charged to the jury, did the trial court err by excluding as hearsay a threat made by the alleged victim while holding a gun on the appellant?
>
> 2.
>
> Did the trial court err by failing to charge involuntary manslaughter because appellant testified that the gun went off during a struggle with one of the alleged victims?

(App. 693).

The State filed its final brief in response on January 28, 2015. (App. 712-755). After oral argument held on March 9, 2016, Petitioner's appellate counsel filed a letter with additional authority in support of the hearsay issue. (App. 758-766). On May 18, 2016, this Court affirmed

the convictions and sentence in an unpublished, per curiam opinion, *State v. Williams*, Op. No. 2016-UP-215 (S.C. Ct. App. filed May 18, 2016) (per curiam), in which it summarily addressed the merits of the hearsay issue, but found the involuntary manslaughter instruction issue not preserved for a merits review. (App. 767-768). The remittitur was issued on June 3, 2016.

Williams filed his application for post-conviction relief on December 28, 2016. (App. 769). The State filed its return on October 5, 2017, moving to dismiss some of the claims raised by Williams and for a more definite statement as to others. Williams later filed amended applications, and his two PCR actions were merged. An evidentiary hearing in the matter was held before the Honorable Robin B. Stilwell on December 18, 2019, at the Greenville County Courthouse. Williams was present and represented by counsel, C. Rauch Wise, Esquire. At the conclusion of the hearing, the PCR court took the matter under advisement then subsequently requested proposed orders from each party. On March 31, 2020, the PCR court issued an order denying post-conviction relief to Williams on all claims raised, save for one: that Williams' defense attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction on mutual combat. (App. 897-921). The PCR court denied the State's motion to alter or amend the judgment. (*See* App. 922-932). Both parties timely appealed.

The State filed a petition for writ of certiorari on November 18, 2020, in the Supreme Court of South Carolina. Williams, through counsel, filed his return on February 3, 2021. On cross appeal, Williams, through counsel, filed his petition for writ of certiorari on January 22, 2021, in the Supreme Court of South Carolina. The State filed the return on June 7, 2021. On June 29, 2021, our Supreme Court transferred the appeal to this Court.

On November 14, 2023, this Court granted the State's petition and denied Williams's petition. This Brief of Petitioner follows.

PETITIONER'S STATEMENT OF FACTS

In the early morning hours of July 10, 2010, Respondent Williams murdered his wife Natasha Kerns with a handgun, shot her boyfriend Anthony Wilson moments later, and endangered the lives of Kerns' minor children. There had been two domestic incidents between Williams and Kerns at the home in the past and Williams had moved out. Right before her murder, Kerns had petitioned for a restraining order against Williams and for child support. Williams had just been served with the papers. Williams was upset about having to pay child support. At the time of her death, Kerns had barricaded her front door with furniture and her back door was equipped with a security alarm. (App. 80-82; 285-87; 290-295; 300-01; 313; 340; 508-513; 554-58; 564; 574).

The Night of July 9, 2010 into July 10, 2010 – Williams

On the night of July 9, 2010, Williams picked up his date Cynthia Booker and Booker's aunt and drove them in his black Chrysler 300 to a club. (App. 250, 518). The three were at the club until approximately 3:45 a.m., when Williams left Booker and her aunt suddenly. (App. 251-253). Booker saw Williams peeling his tires on his way out of the club's parking lot, leaving her and her aunt to find their own ride home. (App. 253-254).

Williams testified that he left, changed clothes to "fit in" at another club (he changed into jeans, Nike shoes, and donned his "leather jacket with ... colors ... representing [his] bike club). (App. 525-526). According to his testimony, he left that club "about 4:15, 4:30" and called Kerns but Kerns did not answer. (App. 526). He drove to the home he formerly shared with Kerns and saw a strange car in the driveway with out of state plates. (App. 526-527).

The Night of July 9, 2010 into July 10, 2010 – Kerns

During the early morning hours before her murder, Kerns was in her home with her

boyfriend, Anthony Wilson. (App. 285-287). After returning from going out to eat, the two interacted with the children, talked, then went to bed. (App. 288). The children were Kerns' son "*J*" (age 9) and his baby sister (age 2). (App. 86-89). "*J*" had his own bedroom where he slept, and his baby sister slept in Kerns' bedroom. (App. 288-289). Williams was the sister's father. (App. 89; 484-486).

What the Victims Saw and Heard

At trial, "*J*" testified that he knew something was wrong that morning when he "heard the first fire" [gunshot]. (App. 90). After hearing the shot, *J.* woke up, cut on the lights, cut them off, then looked out the window and saw a Chrysler 300 [Williams' car] parked outside the house. (App. 90-91). *J.* was able to identify this car as his sister's dad's car. (App. 91).

Wilson testified that he was awakened by dogs barking and "some ruckus going on around the outside of the house." (App. 289-290). He testified that when he woke Kerns about the noise, she grabbed her gun and went towards the front of her home. Wilson took Kerns' daughter towards her son *J.*'s bedroom. (App. 290-291).

Kerns called 911 on her cellphone and told the operator there is someone outside her home, that her dogs were barking, and that she had her pistol for her own protection. She also told the operator that she and her husband are going through a divorce and an order of protection is pending. She also told the operator that Williams was on her front porch. On the 911 tape, one can hear Kerns telling Williams to get away from her home. Then one can immediately hear a loud bang [the gunshot], Kerns dropped her phone, and one can hear her collapse to the floor of her living room in front of a picture window where her body was later found by police. (State's

Ex. 1 [911 call], App. 67-82, 540, 623).[1] Williams shot her through the front living room window. (App. 108-09, 120-22).

Wilson testified that before the first shot was fired, he heard Kerns near the front door say something about "get away from my property, get away from my house." (App. 291). Then Anthony heard "banging on the outside" and Kerns shouting. Right after that, "it went like straight silent." (App. 292-293). Williams then kicked or forced out an entire lower front pane of a window in a garage converted into a den. The pane did not break, but came completely dislodged from the window, where police later found it propped against the inside den wall. (App. 109, 339, 391). Williams then entered the home through this opening in the window armed with his handgun. (App. 294-95). Wilson testified Williams fired shots and "[t]he first one—I guess the first one hit" and "took [Wilson] to the ground." (App. 295). Eventually, Wilson regained consciousness when *J.* began shaking him. He found a towel and wrapped it around his head, then made his way down the hallway. He saw Kerns "laying on the floor by the [front living room] window on her back." He checked her pulse. The sheriff came through the back door shortly afterwards. (App. 297). Wilson had suffered a grazing shot wound to the head. (App. 298-300).

J. testified at trial that after he heard the first shot and saw Williams' car outside, he left his room crawling down the hallway and found his mom lying on the living room floor. (App. 92, 527). *J.* stated he saw Williams standing over his mom shooting her. (App. 92).[2] *J.* testified

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[1] The 911 call was entered at trial as State's Exhibit 1 and played for the jury. (App. 79). The State's exhibits are not only a part of the lower court record, they were also part of the direct appeal, having been designated and relied upon in argument. (*See* Appellate Case No. 2013-001152).

[2] *J* was obviously confused as he was 9 years old at the time and witnessed incredible violence. His mother was found dead, on her back, in front of the living room window of her

Williams left "[a]fter he ran out of bullets." (App. 101). *J.* explained that he knew Williams ran out of bullets because "he faced it at me" and "he shot it. He shot it at me. And then he ran out of bullets. You know how a gun says—when the bullet goes out of bullets, and then it says pssh [phonetic] and it's out of bullets. And then he left." (App. 104).

After committing the crimes, Williams left the residence, got into his Chrysler 300, and drove back to his home in Laurens County. Williams parked the Chrysler 300 in his garage, pushed a lawn mower behind the car, and then closed the garage door. (App. 561, 192, 576-77). He left in another vehicle, a Chevy Tahoe. (App. 543).

Police Investigation

Upon arrival, Deputy Laura Campbell of the Greenville County Sheriff's Office, along with two (2) other deputies, approached and entered the home through the kicked out window frame. (App. 109-110). Deputy Campbell described a "young boy in a pair of boxer shorts holding a very young girl that looked to be less than two (2) in a pair of pink-footed pajamas." (App. 110-111). "They were both screaming hysterically, staring at their mother on the floor. Both were crying, screaming, Help us, and He killed my mommy." (App. 117-118). Deputy Campbell testified there was also an adult black male in the living room that appeared to be injured with a towel around his head soaked in blood. (App. 118). As Deputy Campbell got the children out of the house, through the same window frame hole, the little boy spontaneously stated: "Willie Marvin killed my mom." (App. 118)

Police found Kerns lying on her back in the living room of her home with a gunshot wound to her head, her phone nearby. Police also found a bullet hole in the living room front

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home. She had only one gunshot wound; however, her shirt was covered in blood. In *J's* bedroom at the other end of the house, police found at least three (3) bullet holes, including in *J's* bunk bed. Wilson had collapsed in *J. 's* bedroom after he was shot.

window between where the curtains opened. She was lying below these curtains with her feet toward the window near the far right of the front window if one is standing in the living room of the home looking out. (App. 108-09; 120-22).

In the den, which was a converted garage, and is at the far right of the home if standing inside the residence, police found a bottom four (4) square windowpane that had been forced out and into the den, and then placed upright against a wall behind a couch. This window faces the driveway of the residence. The glass in the windowpane was not broken. The frame had been forced out and into the den by someone outside the home. The hole made by the missing four-square pane was large enough for one (1) person to crawl through and enter the home. (App. 109-110; 120).

At the other end of the ranch style home from the den, at the end of a hallway, to the right, in *J.*'s bedroom, police found several bullet holes. One (1) bullet hole was in the child's bunk-bed, and two (2) were in the ceiling. A fired bullet was collected from a wall. Also found on the carpet of this room was blood where Wilson had collapsed. No shell casings were found inside or outside the home. (App. 95; 392-401). The murder weapon was not found either.

After interviewing Wilson and "*J.*", investigators determined Williams had committed the crime. Police also interviewed members of Williams' family. Police determined Williams was a resident of Gray Court, in Laurens County. (App. 118, 323-25, 315-17, 331-33, 337, 360-64).

Sometime that morning, the Greenville County Sheriff's Office requested assistance from Laurens County police in searching for the suspect vehicle in reference to this case. (App. 154). Deputy Joshua Garrison of the Laurens County Sheriff's Office observed Williams driving a champagne Chevy Tahoe, just after noon on July 10th. Williams had switched vehicles. (App.

155).[3] Deputy Garrison activated his blue lights to initiate a stop of Williams' vehicle; however, Williams "sped off at a high rate of speed." (App. 156). Garrison chased Williams for approximately twenty-six (26) miles at speeds in excess of one hundred and ten (110) miles per hour. (App. 156). The car chase ended when Deputy Garrison disabled Williams' vehicle by ramming it with his patrol car. Williams was found inside the vehicle with a "knife sticking out of his chest," having tried to kill himself. (App. 157-158). The knife was removed from his chest, and he was apprehended. (App. 158). Williams was taken for treatment. (App. 327).

Autopsy and Forensics

An autopsy was performed on Kerns on July 12, 2010 by Dr. Michael Ward, Chief Medical Examiner for Greenville County. (App. 258-261). The autopsy showed Kerns suffered a gunshot wound to her face, which entered just inside of the victim's right eye, *i.e.* she was shot between the eyes. Further, the wound was surrounded by irregularly-sized superficial scratches described as intermediate target defect. This occurs when the bullet passes through another object before it strikes the person. She also suffered superficial scratches on the inside portion of her eyes which means "her eyes were open when the bullet impacted her face." (App. 262-263). Dr. Ward testified that she would have dropped virtually immediately after the wound was inflicted. (App. 264).

Forensic examination determined that Kerns was killed with a .38/9mm caliber bullet, which was not from her own handgun, which was found next to her body. When police searched Williams' residence, they found a box of five federal .38 caliber bullets. These bullets were

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[3] Officer Greg Hawkins with the Greenville County Sheriff's Office warrants division testified he went to Laurens to Williams' home to find out if any of the five (5) vehicles that Williams had registered in his name were there. Officer Hawkins discovered a Chrysler 300 in Williams' garage when he arrived. The garage was closed, and a riding lawn mower was parked behind the Chrysler 300, *i.e.* Williams hid the car in his garage and attempted to make it look like he had not been anywhere in the Chrysler. (App. 320; 360-61; 576-77).

consistent in caliber and design with the fired bullet from the autopsy and the bullet recovered from the wall of *J*'s room. The .38 pistol that went with the .38 caliber bullets was never recovered. (App. 341; 360-64; 404-17).

Williams Testimony on What Occurred in the Home

Williams testified he approached the home, could not use his key because the storm door was locked, so he knocked repeatedly but received no answer; rather, he saw "the curtain move" then, hearing a noise behind him, turned to see a man approaching. That man pulled a gun on him. (App. 529-530). He demonstrated to the jury a maneuver he claimed was in self-defense. (App. 536). He stated: "Then the gun went off, pow." (App. 536). Williams asserted that they "wrestled" and both fell through the glass into the home. (App. 537-538). Williams testified that the man "got away from me" perhaps dropped the weapon, but then retrieved it. (App. 537-538). He pursued the man into the home. Eventually during another tussle, the gun went off again three times and the man fell to the floor. He claimed not to be around the children when that happened. (App. 539-540). He testified he went back up the hallway and happened upon Kerns. She had no pulse. He saw her phone that showed a 911 call. He testified he "flipped out" and left. (App. 540). Williams admitted telling a friend, Tracy Irby, that he had "messed up," and admitted the police chase. (App. 546-550).

STANDARD OF REVIEW

Appellate courts will "defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them." *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). In particular, appellate courts "afford great deference to a PCR court's credibility findings." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 435–36 (2018) (citing *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). However, "[i]f no probative evidence exists to support the PCR court's findings," the appellate "[c]ourt will reverse." *Lowry v. State*, 376 S.C. 499, 504, 657 S.E.2d 760, 763 (2008) (citing *Pierce v. State,* 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000))

As to the PCR court's conclusions, appellate courts will "review questions of law de novo, with no deference to trial courts," *Smalls,* at 180-181, 819 S.E.2d at 839, and "will reverse the PCR court if its decision is controlled by an error of law," *Frierson*, 423 S.C. at 262, 815 S.E.2d at 435–36 (citing *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

Review of Ineffective Assistance of Counsel Claims

To establish counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694.

ARGUMENT

I.

The PCR court erred in finding Williams' defense attorneys were constitutionally ineffective for not objecting to the trial court's jury instruction on mutual combat because Williams was not entitled to a self-defense instruction and the PCR court failed to make a proper finding that Williams proved there is a reasonable likelihood that the outcome of trial would have been different had Williams' attorneys objected to the mutual combat instruction.

The PCR court's order granting post-conviction relief shows reversible error. The PCR court erred in its application of the *Strickland* test. Further, the critical fact-finding cited for relief lacks support in the record. Consequently, the grant of relief must be reversed. *Frierson, supra, Lowry, supra.*

The PCR Ruling:

The PCR court improperly premised a finding of ineffectiveness on the summary conclusion that the mutual combat instruction should not have been given and that it interfered with Williams' ability to present a theory of defense. (App. 913). Yet, Williams claimed self-defense in *struggling* with Wilson; he did not claim self-defense in *shooting* Wilson because Williams never testified that he had the weapon.[4] Williams never claimed to shoot the gun or mishandle the gun in any way. (*See* App. 535-536; 575; 846; 853; 856). Moreover, in a separate issue, the PCR court expressly found that South Carolina does not recognize "transferred self-defense," and also concluded there could be no *Strickland* prejudice from a failure to request a

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[4] Williams' defense was accident. As the trial judge noted, there was no evidence of accident. Accident was charged only on the basis that Williams said "accident" in his testimony. (App. 601). As a matter of law, though, the evidence could not support accident as he never had the weapon. *See State v. Owens*, 427 S.C. 325, 334, 831 S.E.2d 126, 130 (Ct. App. 2019), *aff'd*, 433 S.C. 482, 860 S.E.2d 357 (2021) ("a defendant can be acting lawfully, even if he is in unlawful *possession* of a weapon, if you find he was entitled to arm himself in self-defense and the victim was shot by accident by the unintentional discharge of the weapon"). In short, there is no evidence that "the act of the defendant [] caused the harm...." *Id.*, at 333.

"transferred self-defense" instruction because "the evidence did not tend to support Applicant's version of events at the victim's home." (App. 920). In essence, there could be no "transferred self-defense" theory to apply; thus, no prejudice in failing to object to the mutual combat charge that could potentially affect self-defense. Additionally, in yet another separate issue regarding a failure to preserve the denial of a request to instruct on involuntary manslaughter, the PCR court expressly found this State does not recognize "imperfect self-defense." (App. 908). The PCR court similarly reasoned that even if counsel was somehow deficient, there was no prejudice as Williams' testimony *was not credible* considering the evidence at trial, referencing the 911 call when the victim advised that Williams was trying to enter her home, and Wilson along with Kerns' young son identifying Williams as that shooter. (App. 908). In irreconcilable contrast, in summarily finding prejudice to grant relief, the PCR judge concluded that the mutual combat charge should not have been given, but "[u]nder this charge, the jury was unable to fairly consider the Defendant's claim of self-defense." (App. 913). There was no consideration of the fact that the only possible evidence to support self-defense was Williams' testimony – testimony that the PCR court had found not credible considering the entirety of the evidence or that the evidence of guilt was overwhelming. There was no consideration of the fact that "transferred self-defense" or "imperfect self-defense" was not available. The analysis and fact-finding are flawed.

The grant of relief should be reversed.

A. Williams was not entitled to a self-defense jury instruction because the self-defense maneuver he allegedly performed was, by Williams' own admission, meant to repel Wilson and cannot serve to justify the resulting death of Kerns, a third party not involved in the struggle.

"A self-defense charge is not required unless it is supported by the evidence." *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007). 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." *Id.*, at 69-70, 644 S.E.2d at 52. *See also State v. Washington*, 424 S.C. 374, 411, 818 S.E.2d 459, 478 (S.C. Ct. App. 2018) (same).

"The mutual combat doctrine is triggered when both parties contribute to the resulting fight." *State v. Taylor*, 356 S.C. 227, 235, 589 S.E.2d 1, 5 (2003). "If the defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs." *Id.*, at 232, 589 S.E.2d at 3. The trial court in this case instructed the jury, without objection from the defense, as follows:

> If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true if even during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 644-45).

The PCR court found that the charge was not warranted here and the counsel was "constitutionally ineffective" in not objecting. (App. 912-913). The basis for prejudice, however, appears to be limited to the fact that the charge generally hampers the claim of self-defense. However, the PCR court failed to consider that there was no basis for self-defense, having correctly recognized there is no transferred self-defense or imperfect defense available. (App. 908, 919-921).

To allow the PCR court's grant of relief to Williams to stand on the basis that the mutual combat instruction interfered with the unwarranted self-defense instruction would be to allow Williams to enjoy a windfall. *See generally Lockhart v. Fretwell*, 506 U.S. 364, 366 (1993) (holding that the petitioner's sentencing proceeding was not rendered unreliable or fundamentally unfair when his attorney had failed to make an objection based upon authority that was subsequently overruled and that, to hold otherwise, criminal defendants would be granted "a windfall to which they are not entitled.").

B. Williams has failed to prove that there is a reasonable likelihood the outcome of trial would have been different had his attorneys objected to the mutual combat instruction because, his defense at trial was primarily one of accident and not self-defense, which would have undercut any effect the mutual combat instruction would have had in the jury's deliberation.

The PCR court erred in summarily finding *Strickland* prejudice. The focus was on counsel's deficiency and the legal principle that mutual combat generally negates self-defense. But the PCR court in not considering the facts of the individual case in assessing prejudice.

To be entitled to relief, Williams had the burden of demonstrating the requisite prejudice. Specifically, "[t]o prove prejudice, an applicant must show there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different." *Carrier v. State*, 441 S.C. 547, 561, 895 S.E.2d 679, 686 (Ct. App. 2023) (quoting *Franklin v.*

Catoe, 346 S.C. 563, 571, 552 S.E.2d 718, 723 (2001)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome [of a trial]." *Id.*, quoting *Strickland*, at 694). "[T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.*, quoting *Strickland* at 696).

It appears here that the PCR court adopted Williams's reliance upon *State v. Taylor,* 356 S.C. 227, 589 S.E.2d 1 (2003), but that case is distinguishable from this one and does not support the PCR court's finding of prejudice. In *Taylor*, this Court found that the trial court had improperly instructed the jury on mutual combat. *Id.* at 235, 589 S.E.2d at 5. Our Supreme Court explained that the question of whether a defendant was engaged in mutual combat is significant because a defendant so engaged may not rely upon self-defense. *Id.*, at 232, 589 S.E.2d at 3 (citation omitted). In finding that Taylor had suffered prejudice due to the trial court's charge of mutual combat, this Court noted that Taylor "relied entirely on self-defense at trial." *Id.*, at 235, 589 S.E.2d at 5.

Unlike Taylor, Williams' primary defense at trial was not self-defense; rather, it was that of accident. Trial counsel Jones testified at the PCR hearing that the defense heavily relied on the theory of accident as to Kerns' death. (App. 862). The justification for Williams' discharge of responsibility being that he was acting in self-defense while struggling with Wilson in front of the home, and as a result of the struggle, the gun accidentally fired killing Kerns. Williams' testimony at trial was that when he engaged with Wilson, "the gun went off, pow." (App. 536). Williams did not testify that his hands were even on the firearm when it allegedly discharged and killed Kerns. (App. 536). The trial court initially denied defense counsel's request for an instruction on accident, but later agreed to give the instruction because Williams had testified

"the gun went off accidentally . . . ." (App. 581-82, 601).[5] During his closing argument, trial counsel Warder argued to the jury that Kerns's death was "not a case of murder. This [was] a case of a terrible accident that resulted out of a fight." (App. 616). In accordance with the defense request, the trial court instructed the jury that Williams was raising the defense of accident, and that the burden was on the State to prove beyond a reasonable doubt that Kerns's death was not an accident. (App. 647-48).[6] Again, the defense was accident.

Even so, the nub of the error here is that the PCR court failed to consider, in granting relief on this issue, that there could be no *reasonable* probability of a different result. *Strickland.* The PCR court's other findings show that had the proper *Strickland* analysis been made, the result would have been the denial of relief.

In a separate portion of the order (addressing the failure to preserve the trial court's decision not to charge involuntary manslaughter), the PCR court carefully set out the reasons that guilt was overwhelming and Williams's testimony not credible:

> ... Applicant's explanation of the events at the victim's home was not credible in light of the evidence. The evidence at trial showed that the victim had sought an order of protection and that Applicant had recently been served with court papers indicating that he and the victim were due in the Family Court for a hearing a week after her death, that the victim had barricaded her front door with furniture out of fear of Applicant, that Applicant had attempted to call the victim multiple times on the night of her death, that Applicant abandoned his date at a nightclub in a hurried fashion at around 3:45 a.m. on the night of the murder, that he arrived at the victim's home at around 4:45 a.m. on the morning of the murder, that the victim told the 911 operator shortly before being shot through the eyes that she believed Applicant to be attempting to

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[5] The State objected to the accident charge because "he never said he shot the gun. He did not take any action to harm." (App. 602).

[6] For that matter, and relatedly, Williams failed to show that his defense of accident was impaired by the mutual combat charge. Williams was not entitled to the accident charge, *see* n. 5, *supra,* but the instructions firmly placed the burden on the State. (App. 648).

> gain entry to her home, that Wilson identified Applicant as the shooter, and that the victim's young son identified Applicant as the shooter.

(App. 908).

And that does not reference his admission of having "messed up," (App. 546), and his attempt to avoid capture resulting in a high-speed chase to avoid capture. *See, e.g, State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 266 (2006) ("Flight from prosecution is admissible as guilt."). *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003) is instructive.

In *Jackson*, our Supreme Court agreed with the PCR court that Jackson's "trial counsel provided deficient representation by failing to request a charge on self-defense." *Id,* at 572, 586 S.E.2d at 564. However, it disagreed with the PCR court that the deficiency resulted in *Strickland* prejudice when the whole of the record was considered: "Our confidence in the outcome of Jackson's trial is not undermined by his failure to receive a self-defense charge. Jackson's testimony was unsupported by the physical evidence and highly incredible." *Id.*, at 573, 586 S.E.2d at 564. Similarly, here, there could be no reasonable probability of a different result when the overwhelming evidence fails to show self-defense – and especially so where the PCR court finds, in a separate part of the order, that Williams's "explanation of the events at the victim's home was not credible in light of the evidence." (App. 908). *See Felder v. State*, 427 S.C. 518, 527, 832 S.E.2d 591, 595 (2019) ("the PCR court should consider the specific impact counsel's error had on the outcome" and "evaluate 'the strength of the State's case in light of all the evidence presented to the jury.' ") (quoting Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018)).

Simply, it is not enough to say the instruction was wrong, or that a mutual combat charge could negate the self-defense charge. A correct *Strickland* prejudice analysis requires a deeper

look at the evidence in the specific case. When considered here, for the reasons asserted above, Williams failed to show *Strickland* prejudice. The PCR court's grant to relief should be reversed.

II.

The PCR court erred in denying the State's motion to alter or amend the judgment because its order granting post-conviction relief is vague in that it does not specify to which of Williams' convictions the PCR court's grant of relief applies and the grant, if it is allowed to stand, should be limited to the murder conviction alone.

Williams was convicted of murder as to Kerns (2013-GS-23-3238), attempted murder as to Wilson (2013-GS-23-3239), unlawful conduct towards a child as to J (2013-GS-23-3240), and possession of a weapon during the commission of a violent crime as to murder (2013-GS-23-3238). (App. 680-89). The PCR court found Williams' counsel was constitutionally ineffective for failing to object to the jury instruction on mutual combat because it negated the self-defense instruction. (App. 912-13). The PCR court concluded that "[t]he *conviction* . . . is overturned and a new trial granted . . . ." (App. 921) (emphasis added). The PCR court did not make clear whether it meant to order a new trial for one conviction or multiple convictions.

Petitioner moved to alter or amend the judgment and urged reversal of the grant of relief, but also requested that the PCR court limit its grant of relief to the murder conviction, or clarify which one of the convictions it referenced. (App. 922-924). The PCR court denied that motion without providing any clarification or limitation. App. 932.

However, the trial court's jury instruction on mutual combat was concerned only with the murder of Kerns. The mutual combat instruction, in its entirety, was:

> Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to a physical encounter. If the Defendant voluntarily participated in mutual combat for purposes other than protection, ***the killing of the victim would not be self-defense***. This is true if even during the combat the Defendant feared death or serious bodily injury. However, ***if before the killing is committed***, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would

> be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 644-645) (emphasis added).

Because Kerns is clearly the victim that is referenced, *i.e.,* the only victim killed, the instruction could be referring to none other. The instruction could not have affected consideration of any of the other charges. However, this matter becomes moot upon this Court's reversal of the grant of relief for all the reasons argued in Issue I. Should it not, this Court should direct that relief be so limited.

CONCLUSION

For all the foregoing reasons, this Court should reverse the PCR court.

Respectfully submitted,

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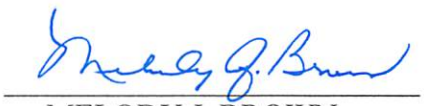
By: 
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March 28, 2024

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[7] Counsel acknowledges the work of former Assistant Attorney General Taylor Zane Smith who previously represented the State in this matter and authored the petition. Much of his work in included in the instant brief.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

The Honorable Deadra L. Jefferson, Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge
Lower Case No. 2016-CP-23-7610

WILLIE MARVIN WILLIAMS,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

Appellate Case No. 2020-000796

CERTIFICATE OF SERVICE

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Brief of Petitioner, and Certificate of Service has been forwarded to Respondent's counsel, Kathrine H. Hudgins via email today, March 28, 2024 to KHudgins@sccid.sc.gov, and to her assistant Chris Stock, at CStock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 28th day of March, 2024.

s/ Angela Brown

Angela Brown
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