

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge
—————

HORACE E. WATTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001122
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

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Oct 15 2024

S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court err in finding trial counsel was effective when adopting a trial strategy of mistaken identity that prevented petitioner from testifying at trial about being mobbed by a group of more than ten individuals who charged at petitioner, forcing him to discharge his firearm out of fear for his life?

STATEMENT

This case involves the July 12, 2014, shooting at a party at the Cleckley home in Columbia. Columbia Police Officer Ivan Birochak testified that he was dispatched to an incident off Magnolia Street near Two Notch Road in Columbia: “It was dispatched as a disturbance, possibly a fight in progress.” App. 362, l. 17 – 363, l. 5. The Cleckley household, “always had something going on.” Birochak said there were barbecue grills in the yard, and there were usually people sitting around playing cards, drinking beer; it was a busy location. App. 365, ll. 3-16. Birochak observed “probably thirty, forty people standing out from the house and in and around the house. No one was in distress. I spoke to several adults on the scene, stated there had been a disturbance.” App. 363, ll. 6-13. This was about 8:26 p.m., and Birochak left the scene. He did not complete an incident report since everything appeared calm, and whatever problem occurred was over. App. 363, ll. 6-25. However, the stage had been set for the later shootings.

After Birochak left the scene, another call came in and he returned to Magnolia Street to a different and very chaotic scene. App. 369, l. 1 – 370, l. 25. Birochak recalled that he was “mobbed by people” at the scene and that there was yelling, screaming, and crying. App. 371, l. 5 – 372, l. 4. Birochak testified that “[n]umerous people came up and were [telling me] we know who did this. We know who shot us up. We know who just shot us. And they named Malik Davis¹ and Horace Watts. And that was throughout the entire time there. I was approached by numerous people saying, we know who did it. We know where they’re staying. We know who did this to us.” App. 383, l. 18 – 384, l. 4.

This was in essence the case against petitioner: the story of the chaotic party with dozens of people involved, most of whom knew petitioner and his brother, who testified that petitioner’s

¹ Malik Davis and petitioner are brothers. App. 1087, l. 9 - 1088, l. 16.

brother, Malik, had been involved in the earlier disturbance and that petitioner and Malik returned to the party and started shooting later in the evening. Despite most of the witnesses to the shooting knowing both Malik and petitioner, petitioner's lead trial counsel, Adam Ruffin, selected misidentification as his defense strategy. App. 990, l. 9 - 993, l. 15.

What the jury did not hear, due to the strategic decision of petitioner's trial counsel, was the reaction of this large crowd of people when petitioner arrived on the scene just before the shooting. Had the jury heard the complete story of the evening of July 12, 2014, they would have discovered that petitioner arrived on scene to smooth over the earlier difficulty between people at the party (people he knew) and petitioner's brother, Malik Davis. App. 1081, ll. 5 - 23. The jury would have heard about the reaction of the crowd to petitioner and Malik arriving:

A. That's what I'm saying, I discharged the firearm. I don't -- I don't know personally what bullet struck Mr. Isaac. You know, what I'm saying is that I discharged my firearm in the self-defense manner because I was in immediate danger and that's what I had to do to save my life and [Malik's] life.

Q. The immediate danger of who?

A. Of these guys that was there at this, at this party.

Q. Okay. So you had a mob coming after you?

A. Multiple people. More than ten.

App. 1085, ll. 4 - 14.

This imminent fear of the mob's reaction to his mere presence would have allowed petitioner to assert self-defense as a trial strategy. As petitioner never denied being present at the time of the shooting and many of the individuals at the party were well acquainted with petitioner, the trial strategy of mistaken identification made no sense to petitioner. App. 1073, l. 18 - 1074, l. 17. However, trial counsel adopted that approach and rejected any self-defense

assertion as a waste of time. App. 1077, ll. 10 – 16. Ultimately, petitioner felt he could not testify during trial as his admission to being present and acting in self-defense would destroy the entire defense trial counsel had adopted. App. 1074, l. 11 – 1075, l. 22.

Absent a self-defense argument and charge, petitioner was tried for murder, attempted murder, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol. App. 1128 - 1139. Petitioner's case was called for trial on February 6, 2017, before the Honorable Clifton Newman. Carter Potts, Jessica Nickels and Brent Arant were the assistant solicitors. Adam Ruffin, Jonathan Comish, and Stephen Krzyston appeared on petitioner's behalf for trial. App. 1. Comish and Krzyston were brought in late to assist Ruffin during trial, with Ruffin taking over as lead counsel from Anastasia Walker who originally served as petitioner's counsel. App. 1086, l. 13 – 1087, l. 3.

On February 9, 2017, the jury found appellant guilty on all four counts. App. 1020, l. 23 – 1021, l. 11. Judge Newman sentenced appellant to thirty years imprisonment for murder, and he imposed a ten year consecutive sentence for attempted murder. Judge Newman also sentenced appellant to a concurrent five year term for possession of a weapon during the commission of a violent crime, and one year imprisonment for unlawful carrying of a pistol. App. 1044, ll. 17-22.

On direct appeal, Chief Appellate Defender Robert Dudek filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) asserting error in allowing police officers to relay hearsay testimony that petitioner and his brother were the shooters. The Court of Appeals dismissed the appeal. State v. Watts, No. 2017-000255 (S.C. Ct. App. Dec. 18, 2019).

Petitioner filed for PCR relief alleging ineffective assistance of counsel. App. 1048 – 1054. Following the state's return that alleged the action was untimely, petitioner was granted

equitable tolling of the statute of limitations. App. 1106. Petitioner's PCR counsel, Michael F. Lifsey, filed an amended PCR application, alleging counsel was ineffective in failing to pursue self-defense, among other allegations. App. 1062 – 1063. An evidentiary hearing was held before the Honorable Maite Murphy on January 11, 2024, with Mr. Lifsey appearing on behalf of petitioner and Russell Barlow appearing on behalf of the state. App. 1065. The PCR court denied relief by written order of dismissal dated June 21, 2024. App. 1105 – 1127.

This petition for certiorari follows.

ARGUMENT

The PCR court erred in finding trial counsel was effective when adopting a trial strategy of mistaken identity that prevented petitioner from testifying at trial about being mobbed by a group of more than ten individuals who charged at petitioner, forcing him to discharge his firearm out of fear for his life.

A. How the issue impacted trial.

During trial, petitioner and his brother were quickly identified by several witnesses as involved in the shooting. The initial reporting officer was told of petitioner's identity immediately upon arrival following the shooting. App. 383, l. 18 – 384, l. 4.

The positive identifications did not surprise petitioner since he personally knew many of these witnesses and petitioner frequently visited the Cleckley home before the shooting. App. 1080, l. 18 – 1081, l. 4. Relying on mistaken identification confused petitioner since he did not deny being at the Cleckley residence and firing his handgun. App. 1074, l. 3 – 1075, l. 6.

Petitioner did not testify at trial, particularly since his testimony would have contradicted the defense his trial counsel had crafted. App. 1074, l. 22 – 1075, l. 6. As such, the jury did not hear about the numerous persons who charged at petitioner and his brother as they arrived back at the Cleckley home, nor did the trial judge charge self-defense to the jury.

B. How the issue was addressed at PCR.

Petitioner testified that he arrived at the Cleckley residence with his brother Malik in an attempt to address and smooth over an earlier difficulty between people at the party (people petitioner knew) and Malik. App. 1081, ll. 5 - 23. The response of the crowd at the Cleckley party was to rush the pair, putting petitioner in fear of his own life and that of his brother, Malik:

A. That's what I'm saying, I discharged the firearm. I don't -- I don't know personally what bullet struck Mr. Isaac. You know, what I'm saying is that I discharged my firearm in the self-defense manner because I was in immediate danger and that's what I had to do to save my life and [Malik's] life.

Q. The immediate danger of who?

A. Of these guys that was there at this, at this party.

Q. Okay. So you had a mob coming after you?

A. Multiple people. More than ten.

App. 1085, ll. 4 – 14.

Petitioner relayed the difficult start to the attorney-client relationship with Ruffin when he took over representation for his original trial counsel:

Q. Okay. All right. I want to ask you about – I started this earlier, your defense to this crime you said was self-defense, is that correct?

A Yes, sir.

Q. Did your lawyer or lawyers, any of them, what did they say in regards to your self-defense claims?

A. Well, like I say I was well pleased with Ms. Walker because she was the one who was actually taking the time to look into what I was saying and try to fight the case and help me. But as far as Mr. Ruffin and them, they just, they never looked into it. They was, basically, like we're gonna say that they got the wrong person. They seen – they seen the wrong things.

App. 1073, l. 14 – 1074, l. 2.

Petitioner identified the justification cited by Ruffin for this decision, noting the number of witnesses who would be testifying that the actions were not in self-defense as a big problem:

Q. So are you telling the Court you wanted to argue self-defense, but your lawyers said you couldn't argue that, you're gonna argue somebody else did it?

A. Yeah. They they got the wrong person.

Q. Okay. And why did your lawyers telling you that?

A. He said because that, you know, that a lot of things, a lot of witnesses might have perceived something different or, you know what I'm saying, due to occurrence of what was going on. Like I told them I never denied or I'm not saying that I wasn't there or things like that, you know what I'm saying, like I'm telling you that this how it really happened. And he, he just was like we just gonna say that they got the wrong person.

Q. And so are you saying that he cited the fact that there were a bunch of witnesses against you is the reason you couldn't go with self-defense?

A. Yes, sir.

App. 1074, ll. 3 – 21.

Trial counsel admitted discussing self-defense with petitioner.

Q. Well, based on the evidence as a whole, were you able to craft a defense strategy?

A. Not really. I mean, the defense was gonna be all we can do is really poke holes in the State's case. There were inconsistencies certainly which is kind of to be expected when you have a chaotic scene like that and that many people recounting the events. Now, I know Horace has talked about some self-defense stuff today and we did discuss that I think on more than one occasion.

App. 1088, l. 17 – 1089, l. 1.

While counsel admitted discussing self-defense, it was also equally clear he discounted it as a viable option:

Q. All right. So now, our next one is, the failure to raise the defense of self-defense?

A. So, I mean, a couple things, I think, we did discuss that. So first of all none of the witnesses who were there said anything remotely close to something that would suggest this was, was an act of self-defense. So we explain to Horace, and when I say we, I'm talking about me and Anna because when I was meeting with Horace at the jail, it usually was either just me or me and Anna together. So we went over with him and said, you know, the only way that we will get a jury instruction for self-defense was, essentially, if you testify and testify that it was in self-defense and he wasn't gonna do that. So he was not gonna testify. So we explained to him that without his testimony there was going to be no way for us to get a self-defense charge. *And I will also add to that and you just heard Horace's testimony today, I mean, if we put him on the stand and he said what he said he would say, we still weren't gonna get a self-defense charge because it was he went to a fight, a birthday party with a gun to settle a dispute about a fight that his brother had had with them earlier in the day.* So he wasn't without fault in bringing on the difficulty.

App. 1090, ll. 1 – 25 (emphasis added).

Contrary to trial counsel's assertions, petitioner testified that he did not go to the Cleckley home to continue the earlier disagreement, but to smooth over the issue and resolve the difficulty between his friends and his brother Malik. App. 1081, ll. 5 – 15. While the state was free to argue to the contrary, this would not have automatically made petitioner at fault in bringing on either the earlier difficulty (which involved his brother Malik) nor the difficulty when the shooting started, which was caused by the mob of more than ten individuals charging towards petitioner and his brother as soon as they began to walk towards the Cleckley home. App. 1084, ll. 1 - 14.

Trial counsel simply did not believe self-defense was a viable option:

Q. So if I'm understanding your testimony, one of the problems in self-defense was you didn't think it was a particularly believable defense?

A. Well, I agree with that. But I didn't think it was a believable defense, but part of that was because there was no evidence that it was self-defense.

App. 1093, l. 22 – 1094, l. 3. This firm belief was not supported by Mr. Krzyston, Ruffin’s co-counsel, who did believe self—defense was viable if petitioner testified. App. 1100, ll. 11 – 23.

In this regard, trial counsel’s chosen trial strategy (misidentification) was no more believable than the self-defense:

Q. And so you said part of the problem was you thought that the twelve, that the twelve, thirteen, however many fact witnesses they were, would not have supported the idea of self-defense, correct?

A. Right.

Q. But that problem also, those twelve or thirteen witnesses, would not have supported the idea that somebody else did it, right?

A. Right. Yes.

Q. 'Cause there's only two possible real defenses that you can mount to this crime because there's no, no question that the defendant was shot and killed? The victim, excuse me, one victim was shot and killed?

A. Right.

Q. So you got to argue either somebody else did it or he did it and it was legally justified?

A. That's right.

App. 1094, l. 22 – 1095, l. 14. The adoption of misidentification was particularly troubling with the admission of jail call records in which petitioner discussed being present at the time and involved with the shooting. App. 787, l. 12 – 798, l. 21.

Trail counsel’s explanation for this contradiction was his claim that petitioner was adamant, from early in the representation, that he would not be testifying at trial no matter what happened. App. 1095, l. 15 – 1096, l. 20. In contrast, co-counsel Krzyston understood petitioner was reluctant to testify, but felt defendants change their mind during the course of trial based

upon the facts that are developed at trial. App. 1100, ll. 13 – 24. Petitioner was clear on the reason he failed to testify: Ruffin had already rejected self-defense as an option and proceeded with the identification angle and if petitioner had taken the stand to testify, he would be forced to contradict Ruffin’s chosen defense. App. 1073, l. 18 – 1075, l. 22.

C. How the PCR court ruled.

Despite the disagreement between Ruffin and Krzyston regarding the validity of self-defense, the PCR court ruled petitioner was not without fault in brining on the incident and that *no evidence* supported a claim that petitioner’s actions were in self-defense. App. 1122. In addition, the PCR court found petitioner did not wish to testify at trial, finding Ruffin’s testimony on this point credible. App. 1122.

D. How the PCR court erred regarding petitioner’s testimony.

“A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.” Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). To establish a claim for ineffective assistance of counsel, a PCR applicant must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

“The right of a criminally accused to testify or not to testify is fundamental.” State v. Rivera, 402 S.C. 225, 241, 741 S.E.2d 694, 702 (2013). In fact, the right of the accused to testify in his own defense:

is fundamental to the trial process and transcends a mere evidentiary ruling. An accused's right to testify “is either respected or denied; its deprivation cannot be harmless.” McKaskle, 465 U.S. at 177 n. 8, 104 S.Ct. 944. As such, the error is structural in that it is “so basic to a fair trial that [its] infraction can never be treated as harmless error.” Fulminante, 499 U.S. at 289, 111 S.Ct. 1246 (*quoting Chapman*, 386 U.S. at 23, 87 S.Ct. 824).

Rivera, 402 S.C. at 249–50, 741 S.E.2d at 707.

Here, trial counsel admitted he did not believe petitioner’s version of events as supporting self-defense. App. 1090, ll. 1 – 25. Trial counsel admitted he spoke about this doubt with petitioner. App. 1090, ll. 1 – 25. Based upon trial counsel’s own doubts about self-defense (doubts based upon a misunderstanding of the without fault in bringing on the difficulty element, discussed *infra*), trial counsel adopted a defense that made it impossible for petitioner to take the stand without directly contradicting his own lawyer’s defense.

While the trial court did question petitioner on his right to testify during trial, at that stage the proverbial cat was out of the bag: trial counsel had spent a great deal of effort attacking the witnesses’ identification of the shooter. Petitioner was in essence trapped into a defense that assumed he was lying about the mob action that prevented him from testifying in his own defense.

This issue is guided by other cases dealing with witnesses whose testimony would have been central to a defense, such as alibi witnesses, when available and not called by trial counsel. *See Weldon v. State*, 436 S.C. 69, 82, 870 S.E.2d 183, 190 (Ct. App. 2021) (finding “no evidence supports the PCR court's findings that trial counsel provided effective assistance or implemented—much less articulated—any valid trial strategy with respect to the alibi witnesses.”); Martin v. State, 427 S.C. 450, 456, 832 S.E.2d 277, 280 (2019) (finding as a matter of law that Martin's trial attorneys were deficient for not eliciting specific alibi timeline

testimony from available witnesses); Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding counsel deficient in failing to call witnesses “that would have added significantly to the credibility of petitioner's case”).

The Court of Appeals decision in Weldon also dealt with the failure to call the accused as a witness. As in the present case, the trial court in Weldon discussed testifying with the accused during trial. The Court of Appeals noted the applicant “did not testify that trial counsel prevented him from testifying at trial, and he did not elicit testimony from trial counsel at the PCR hearing addressing this issue.” Weldon, 436 S.C. at 82, 870 S.E.2d at 190. In contrast, here the PCR court was provided testimony regarding the reason petitioner was prevented by trial counsel from testifying: trial counsel erroneously did not believe the testimony would create a valid claim of self-defense and had adopted a contradictory trial strategy that would have been negated if petitioner had testified. Thus, the decisions of trial counsel in the present case prevented petitioner from testifying about the events surrounding the shooting.

E. How the PCR court erred regarding self-defense.

The PCR court also erred in holding that petitioner’s actions categorically did not fall under self-defense since he was not without fault in bringing on the difficulty. App. 1122. A self-defense charge is required when the evidence presented at trial raises an inference that:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act.” State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000). Further, “a person has the right to act on appearances, even if the person’s belief is ultimately mistaken.” State v. Dickey, 394, S.C. 491, 501, 716 S.E.2d 97, 101 (2011). A citizen does not have to wait for an aggressor “to get the drop on him.” State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936).

As explained in State v. Harris, 382 S.C. 107, 114, 674 S.E.2d 532, 536 (Ct. App. 2009), “[The defendant] doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.” One does not have to wait until being fired upon to use deadly force. State v. Nichols, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997); *see also* Starnes, 340 S.C. at 322, 531 S.E.2d at 913 (holding that once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act).

Here, petitioner’s testimony was that a mob from the party charged at Malik and petitioner as they arrived on scene to discuss the earlier altercation. Faced with an angry and charging mob, petitioner opened fire into the crowd to save himself and his brother from this threat. App. 1085, ll. 4 – 14. While there was contrary testimony from those at the party, this

contradictory testimony would not have, as a matter of law, negated a charge or a finding by the jury of self-defense.

Petitioner's lead counsel seemed to be under the impression that merely showing up at the party armed with a handgun meant petitioner had "brought on" the difficulty and would have negated a self-defense charge:

Q. All right. So now, our next one is, the failure to raise the defense of self-defense?

A. So, I mean, a couple things, I think, we did discuss that. So first of all none of the witnesses who were there said anything remotely close to something that would suggest this was, was an act of self-defense. So we explain to Horace, and when I say we, I'm talking about me and Anna because when I was meeting with Horace at the jail, it usually was either just me or me and Anna together. So we went over with him and said, you know, the only way that we will get a jury instruction for self-defense was, essentially, if you testify and testify that it was in self-defense and he wasn't gonna do that. So he was not gonna testify. So we explained to him that without his testimony there was going to be no way for us to get a self-defense charge. *And I will also add to that and you just heard Horace's testimony today, I mean, if we put him on the stand and he said what he said he would say, we still weren't gonna get a self-defense charge because it was he went to a fight, a birthday party with a gun to settle a dispute about a fight that his brother had had with them earlier in the day. So he wasn't without fault in bringing on the difficulty.*

App. 1090, ll. 1 – 25 (emphasis added).

This is a misunderstanding of the law. A "person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The mere presence of the handgun does not negate the lawful nature of petitioner's actions leading up to the shooting: going to a party hosted by a friend to discuss an earlier altercation involving petitioner's brother. Trial counsel's belief that self-defense did not apply, as adopted by the PCR

court, simply is a reflection of counsel believing the witnesses who would have contradicted petitioner's testimony. Trial counsel's firm rejection of self-defense is further evidence supporting petitioner's view that trial counsel dictated the defense strategy and made his testimony impossible and justified petitioner's desire that trial counsel withdraw from representation:

Within the first two encounters that me and him had I told him that I want him off my case because the way that he was telling me and the thing that I was telling he was like it didn't matter in my case that a lot of people seen me do it so I'm guilty.

App. 1072, ll. 15 – 20.

F. Prejudice.

As noted, the jury was not charged self-defense. The picture painted by the prosecution was that petitioner and Malik returned to the party and simply opened fire on the gathering without provocation. App. 747, ll. 4 - 12. However, there was testimony from some of the witnesses that there was a belief among the party goers that Malik and petitioner had returned to the area to fight and that people at the party approached the car in the same manner (to fight).

T.T. testified that he approached petitioner and Malik when they arrived since he believed they returned to fight:

A. I heard their voice and noticed them. And then I thought they were coming back to fight, I guess.

Q Whose voice did you hear?

A It was Malik -- I don't know whose voice it was.

Q Okay.

A I just noticed it.

Q Okay. What did you notice next?

A I seen them, so I start walking to the middle of the road because
I thought they was coming back to fight again. . . .

App. 680, l. 6 – 15.

The party crowd was, evidently, in a fighting mood as there was at least one other fight that evening that did not involve petitioner or Malik. App. 244, l. 10 – 20; 288, l. 20 – 289, l. 1. The solicitor even acknowledged the people at the party being willing to fight when petitioner and Malik arrived: “Now, T.T., he saw Malik and Horace get out of the car. And he thought Malik might be coming back for a fight. As I said, T.T., 17 years old now, 15 years old then, yet, he's still too young to realize fights don't solve anything and so he took a few steps forward.” App. 981, ll. 10 – 15.

This version of events would have supported petitioner’s testimony, that he and Malik returned to the party to discuss the earlier difficulties but were charged by a mob looking to fight. App. 1085, ll. 4 – 14. Trial counsel had, throughout the trial, pointed out inconsistencies and discrepancies of the various witnesses and their ability to accurately relay the events leading up to the shooting:

There's groups of people in the street. There's groups of people in the front yard, the driveway, the porch, the backyard, in the house. There's people everywhere. And shots start going off in the yard. Everyone is running and ducking for cover. They're trying to get away from that. That kind of stress makes people make mistakes and get things wrong. People misperceive what's going on because there's a weapon and it's being fired at them.

App. 992, ll. 16 - 25. The party itself involved a very large, boisterous crowd with at least two altercations occurring before the fatal shooting (one between several party attendees and one involving Malik and an attendee). The jury was deprived of the opportunity to evaluate self-defense, due to errors of trial counsel in preventing petitioner from testifying and focusing the

jury's attention on the reaction of the crowd when he arrived on scene. There is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of *certiorari* to allow full briefing on this issue.

Gary H. Johnson

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2024.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

HORACE E. WATTS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Horace Elijah Watts states:

1. He is 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 Maite Murphy, which was held on Jan. 11, 2024, 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 Horace Elijah Watts.

Respectfully Submitted,

Gary H. Johnson

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2024.

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Oct 15 2024

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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.”

Gary H. Johnson

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Appellate Defender

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ATTORNEY FOR PETITIONER

This 15th day of October, 2024.