STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC Court of Appeals

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

Opinion No. 2025-UP-077 (S.C. Ct. App. Filed March 5, 2025)

Lower Court Case No. 2016-CP-23-07610

WILLIE M. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000796

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on April 14, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in reversing the PCR court's grant of relief by finding no prejudice resulting from trial counsel's failure to object to the unwarranted mutual combat charge that prevented the jury from considering both self-defense and accident?

STATEMENT OF THE CASE

In April of 2013, the Greenville County Grand jury indicted Petitioner, Willie M. Williams, for murder, possession of a weapon during the commission of a violent crime, attempted murder and unlawful conduct toward a child, indictments #2013-GS-23-238, 239, 240. (App. pp. 680-685). On May 13, 2013, Williams proceeded to jury trial before the Honorable Deadra L. Jefferson. Richard H. Warder and W. Townes Jones, IV represented Williams at trial. Judith M. Munson prosecuted the case. The jury returned verdicts of guilty on each charge. Judge Jefferson sentenced Williams to life in prison for murder, five (5) years concurrent for the weapon charge, thirty (30) years concurrent for attempted murder, and ten (10) years concurrent for unlawful conduct toward a child. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the convictions and sentences. State v. Williams, Op. No. 2016-UP-215 (S.C.Ct.App. filed May 18, 2016). (App. pp. 767-768).

On December 28, 2016, Williams filed an application for post-conviction relief [PCR]. (App. pp. 769-785). The State filed a return and partial motion to dismiss and motion for a more definite statement on September 13, 2017. (App. pp. 786-793). On May 9, 2019, Williams filed an amended application that was assigned a 2019 case number. (App. pp. 794-802). On July 30, 2019, the State moved to merge the two cases and the motion was granted by the Honorable Letitia H. Verdin on September 3, 2019. (App. pp. 803-807). On December 18, 2019, an evidentiary hearing was held before the Honorable Robin B. Stilwell. C. Rauch Wise represented Williams at the PCR hearing. Taylor Z. Smith represented the State. In a written order signed March 31, 2020, Judge Stilwell granted relief on the one issue involving the trial lawyers failure to object to the trial judge's instruction on mutual combat. (App. pp. 897-921). The judge denied relief on the six other allegations of ineffective assistance of counsel. The

State filed a motion to alter or amend on April 17, 2020. (App. pp. 922-931). Judge Stilwell denied the motion on May 7, 2020. (App. p. 932).

The State filed a timely notice of intent to appeal on May 21, 2020. Williams filed a timely notice of intent to appeal on May 22, 2020. Cross petitions for writs of certiorari were filed with the State filing a petition on November 18, 2020, and Williams filing a petition on January 22, 2021. Williams filed a return to the State's petition for writ of certiorari on February 3, 2021. The State filed a return on June 7, 2021. On June 29, 2021, the South Carolina Supreme Court, pursuant to Rule 243(1), SCACR, transferred the case to the South Carolina Court of Appeals. In an order filed November 14, 2023, the South Carolina Court of Appeals granted the State's petition for writ of certiorari and denied Williams' petition for writ of certiorari. On March 28, 2024, the State filed the brief of petitioner. Williams filed the brief of respondent on April 29, 2024. A three- judge panel of the Court of Appeals heard arguments in the case on December 5, 2024. On March 5, 2025, the Court of Appeals reversed the PCR court's grant of relief, finding no prejudice. Willie Marvin Williams v. State, No. 2025-UP-077 (S.C. Ct. App. filed March 5, 2025). A timely petition for rehearing was filed and then denied on April 14, 2025. This petition for writ of certiorari follows.

STANDARD OF REVIEW

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014))." Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018).

REASON WHY CERTIORARI SHOULD BE GRANTED

This Court should grant the petition for writ of certiorari to further clarify when mutual combat should not be charged and recognize the specific impact of an unwarranted mutual combat charge on self-defense and accident.

ARGUMENT

The Court of Appeals erred in reversing the PCR court's grant of relief by finding no prejudice resulting from trial counsel's failure to object to the unwarranted mutual combat charge that prevented the jury from considering both self-defense and accident.

Facts

The jury found Petitioner, Willie M. Williams, guilty of the murder of his wife, Natasha Kerns, and the attempted murder of her friend, Anthony Wilson, in 2010. At trial, Williams testified that he acted in self-defense when Wilson, armed with a gun, approached him outside of the house where Kerns was living. The two men struggled over the gun and it accidentally discharged, killing Kerns.

In 2007, Williams and Kerns became romantically involved and they had a daughter that same year. (App. p. 484, line 6 – p. 485, lines 1-23). The couple married in 2009, when Williams was home from Iraq where he was working. (App. p. 492, lines 12-15). In February of 2010, Williams resigned from his job in Iraq because of the stress of the working environment and he moved in with Kerns and their daughter and her son. (App. p. 494, line 1 – p. 495, lines 1-13). At the time of the shooting in July of 2010, however, Williams and Kerns had separated. (App. p. 510, lines 2-4). Kerns was living with the children in the home she had shared with Williams in Greenville County. Williams was living in his home in Gray Court.

On the night of the shooting Williams went to some clubs in Greenville. (App. pp. 520-525). Williams testified that he left the last club between 4:15 and 4:30 AM. (App. p. 526, lines 6-8). Williams was supposed to pick up his daughter in a few hours. (App. p. 524, lines 2-6). Williams testified that he called Kerns' cell phone and the house phone but she did not answer. (App. p. 526, lines 10-14). Williams testified at trial, "So, instead of driving 50 miles

back to Gray Court, I had my key to the place. So I said I was going to ride over there." (App. p. 526, lines 15-17).

When Williams got to Kerns' house he saw a parked unfamiliar SUV with North Carolina plates. (App. p. 526, lines 21 – 25). He did not see Kerns' car. (App. p. 526, lines 21 – 25). He parked behind the SUV and went to the front door. (App. p. 527, line 25 – p. 530, lines 1- 2). The storm door was locked and he was unable to use his key. (App. p. 529, lines 13-17). He knocked on the door for three to five minutes. (App. p. 529, lines 20-21). As Williams turned to leave, he heard a noise and then saw a man approaching him with a weapon. (App. p.530, lines 12-14). Williams testified that the man pointed a gun at Williams, Williams reacted in self-defense, the two men struggled over the gun and the gun went off. (App. p. 535, line 21 – p. 536, lines 1-25). As they continued to wrestle over the gun, both men fell through the front window and the struggle continued inside the house. (App. p. 537, lines 1-25). Williams described another struggle over the gun and said, "And then that's when the gun went off, pow, pow, pow." (App. p. 539, lines 4 – 14). The man he was struggling with went to the floor and did not move. (App. p. 539, lines 15 – 20). Williams then saw Kerns on the floor and "blood everywhere." (App. p. 540, lines 6 – 13). Williams rushed over to Kerns and checked for a pulse but found none. (App. p. 540, lines 6-10). Williams began crying, panicked and left the scene. (App. p. 540, lines 6 – 25).

The man who Williams struggled with, Anthony Wilson, testified at trial. Wilson testified that on the night of the shooting he was asleep in bed with Kerns and her daughter when he was awakened by dogs barking and some banging. (App. p. 288, line 12 – p. 289, 290, lines 1-15). According to Wilson, when he awakened Kerns she immediately hopped up, grabbed her weapon and ran toward the front. (App. p. 290, lines 11 – 19). Wilson testified that he took the daughter to the son's room. (App. p. 291, lines 1 – 3). Wilson testified he heard Kerns talking and heard her

"say something about get away from my property, get away from my house." (App. p. 291, lines 18 – 25). Wilson then testified that he saw the "silhouette of a human being come down the hallway" that he knew was not Kerns. (App. p. 292, lines 11 – 22). According to Wilson he heard gunshots and believed the first shot hit him and knocked him unconscious. (App. p. 295, lines 2 – 11). The EMT who testified at trial said that Wilson "had a superficial laceration noted to the right side of his head." (App. p. 174, lines 15 – 20). Wilson testified that he never left the house but regained consciousness and checked on Kerns when the police arrived. (App. p. 296, lines 6 – p. 297, lines 1-15). The parties stipulated, however, that Wilson's bloody handprint was found on the trunk of a car parked outside behind Kerns' house. (State's Exhibit #59). The trial judge instructed the jury on the law of self-defense and accident. (App. pp. 644, line 1 - 648, lines 1-8).

In explaining the elements of self-defense to the jury the trial judge explained that the defendant must be without fault in bringing on the difficulty. (App. p. 644, lines 14-16). The trial judge then instructed the jury:

> 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. p. 644, line 24 – p. 645, lines 1-13). There was no objection to the instruction. (App. p. 658, lines 18-21).

Post-Conviction Relief

In the amended application for post-conviction relief Williams alleged that, "Trial counsel was ineffective in failing to object to the jury charge as to mutual combat when no evidence was presented to support such a charge." (App. p. 796). In the amended application Williams explained, "The trial judge instructed the jury as part of her self-defense instruction, the law of mutual combat. Tr. at 644, l 24 to 645, l4. The South Carolina Supreme Court in State v. Taylor 356 S.C. 227, 589 S.E.2d 1 (2003) held such a charge should not be given in connection with self-defense, especially when no facts support the allegation." (App. p. 797). During the PCR hearing both trial counsel admitted that they were not familiar with the Taylor case. (App. p. 857, line 15 – p. 858, lines 1-14; p. 877, lines 5-16).

Deficiency

While the Court of Appeals did not address the deficiency prong of Strickland, the PCR judge correctly found that the trial lawyers' failure to object to the unwarranted mutual combat charge was deficient writing, "Applicant's attorneys were constitutionally ineffective for failing to object to the jury instruction on mutual combat when no evidence was presented at trial that would have supported such an instruction." (App. p. 912). The PCR judge additionally wrote:

> The law of South Carolina is clear that mutual combat should generally not be charged in connection with self -defense. State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003). In Taylor the Court found that:
>
> > Although the court charged self-defense properly in Petitioner's case, that charge was negated by the court's unwarranted charge on mutual combat. We find that the court's mutual combat charge acted as a limitation on the petitioner's ability to claim self-defense, and prejudiced him by transferring the State's burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense. Id. at 235.

> The same is true in the case at bar. The mutual combat charge had the impact of negating the self-defense charge, and Mr. Williams was in fact prejudiced thereby.
>
> Further, both trial counsel testified at the Post Conviction Relief hearing that they were not familiar with the holding in Taylor. This case was tried on May 13-14, 2013. Taylor had been the law of our state for over 10 years. A reasonable criminal defense attorney should have been knowledgeable concerning the application of Taylor. In addition, even if trial counsel were not familiar with Taylor, the evidence in this case does not support mutual combat. Giving due deference to the credibility issues, the evidence does not indicate that Mr. Wilson and Mr. Williams intended to engage in mutual combat. The evidence did not support mutual combat, and trial counsel should have objected to such a charge. Under this charge, the jury was unable to fairly consider the Defendant's claim of self-defense.
>
> The Applicant has, therefore, met his burden of proof with respect to the Mutual Combat charge.

(App. pp. 912-913). The PCR judge correctly found that the trial lawyers were ineffective in failing to object to the jury instruction on mutual combat when there was no evidence presented to support such a charge.

In State v. Taylor, 356 S.C. 227, 231–32, 589 S.E.2d 1, 3 (2003), the South Carolina Supreme Court wrote:

> The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years. The case law does establish that there must be "mutual intent and willingness to fight" to constitute mutual combat. State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." Id. Whether or not mutual combat exists is significant because "the plea of self-defense is not available to one who kills another in mutual combat." Id. (citing State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919)). In order to claim self-defense, the defendant "must be without fault in bringing on the difficulty." State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the "no fault" element of self-defense cannot be established.

In the present case there was no evidence presented of a mutual intent and willingness to fight. In State v. Bowers, 428 S.C. 21, 32, 832 S.E.2d 623, 629 (Ct. App. 2019), aff'd, 436 S.C.

640, 875 S.E.2d 608 (2022), the South Carolina Court of Appeals, discussing mutual combat wrote:

> The antiquated doctrine was limited in its application by our supreme court in State v. Taylor. In Taylor, our supreme court required that the fight arise out of a pre-existing dispute and that the combatants be armed with deadly weapons. 356 S.C. at 233–34, 589 S.E.2d at 4. Additionally, each party must know the other is armed with a deadly weapon. *Id.* at 234, 589 S.E.2d at 5. Moreover, it is essential that the agreement to fight be "entered into prior to the beginning of combat," also described as an antecedent agreement to fight. 40 C.J.S. *Homicide* § 206; accord Taylor, 356 S.C. at 233, 589 S.E.2d at 4.

In the present case no evidence was presented that Williams and Wilson had a pre-existing dispute or prior agreement to fight. There was no evidence presented that both Williams and Wilson were armed. Williams testified that Wilson approached him outside of the home, armed with a gun, Williams acted in self-defense, struggled with Wilson over the gun when it accidently discharged. Wilson, testified that Williams was inside the house, armed with a gun, when he started shooting at him. (App. pp. 294-295). As the courts found in Taylor and Bowers, the PCR judge correctly found there was no evidence presented of mutual combat. The trial lawyers were ineffective in failing to object to the unwarranted mutual combat charge. The record supports the PCR judge's finding that trial counsel was ineffective in failing to object to the unwarranted mutual combat jury instruction.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under

this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. There is evidence in the record to support the PCR judge's finding that, under the first prong of the Strickland test, the trial lawyers' performance in failing to object to the mutual combat jury instruction fell below an objective standard of reasonableness.

Prejudice

Williams was entitled to a self-defense instruction and the trial judge correctly instructed the jury on the law of self-defense. Williams was also entitled to an accident instruction and the trial judge correctly instructed the jury on the law of accident. Williams testified that he acted in self-defense when Wilson approached him with a gun, they struggled over the gun and the gun accidently discharged, presumably fatally striking Kerns. (App. pp. 535-536). As Williams and Wilson continued to struggle over the gun it accidentally discharged again, presumably grazing Wilson. (App. pp. 537-539).

In State v. White, 425 S.C. 304, 311–12, 821 S.E.2d 523, 527–28 (Ct. App. 2018), the South Carolina Court of Appeals wrote:

> "Upon request, a defendant is entitled to a jury instruction on self-defense if he has produced evidence tending to show the four elements of that defense." Stone v. State, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988). The four elements of self-defense are as follows:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, 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.

Davis, 282 S.C. at 46, 317 S.E.2d at 453. Respondent was entitled to a self-defense instruction.

In State v. Owens, 427 S.C. 325, 330-31, 831 S.E.2d 126, 128-129 (Ct. App. 2019), the South Carolina Court of Appeals wrote:

> The defense of accident (sometimes called misadventure) protects a defendant who, while acting lawfully and with due care, unintentionally causes harm to another. The defense has three elements: (1) the harm was unintentional, (2) the defendant was acting lawfully, and (3) due care was used in the handling of the weapon. See State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); see also State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945) ("If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident."). If the harm was caused by accident, the defendant is not criminally responsible because of the absence of criminal intent. It is precisely this lack of intent that separates accident from self-defense, for self-defense "admits an intentional killing, and sets up as justification a necessity to kill in order to save the accused from death or serious bodily harm, whereas a defense of homicide by accident denies that the killing was intentional." State v. McDaniel, 68 S.C. 304, 317, 47 S.E. 384, 389 (1904). The defense of accident sometimes surfaces in homicide cases, often alongside self-defense. Despite their varying levels of intent, accident and self-defense are not always mutually exclusive defenses. See State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018); State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (Ct. App. 2012). Of course, accident may appear in contexts far removed from self-defense. Blackstone gives the example of a man lawfully working with a hatchet when the head flies off and kills a bystander. 4 W. BLACKSTONE, COMMENTARIES *182.

> The confusion in explaining the defense of accident crops up when no distinction is made between a defendant who has lawfully armed himself with a weapon in self-defense and then accidentally harms the victim (e.g., he stumbles and his finger slips and pulls the trigger) and a defendant who has lawfully armed himself with a weapon in self-defense and then intentionally harms the victim. Only the defendant in the former situation is entitled to the defense of accident, and he is also entitled to have the jury charged that his conduct in arming himself in self-defense was lawful.

Williams lawfully struggled over the gun with Wilson, in self-defense, when the gun accidentally discharged twice, once striking Kerns and once grazing Wilson. Respondent was entitled to both the self-defense instruction and the accident instruction that were properly given in this case. The defense theory was not based on a theory of "transferred self-defense" or "imperfect self-defense" but rather a combination of self-defense and accident under the facts of this case. The unwarranted mutual combat charge, however, negated both the self-defense claim as well as the accident claim.

The PCR judge correctly found that Williams was prejudiced by trial counsels' deficient performance in failing to object to the mutual combat jury instruction when there was no evidence of mutual combat. The PCR judge correctly found that the unwarranted mutual combat instruction negated Williams' self-defense claim writing:

> In Taylor the Court found that:
>
> > Although the court charged self-defense properly in Petitioner's case, that charge was negated by the court's unwarranted charge on mutual combat. We find that the court's mutual combat charge acted as a limitation on the petitioner's ability to claim self-defense, and prejudiced him by transferring the State's burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense. Id. at 235.
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> The same is true in the case at bar. The mutual combat charge had the impact of negating the self-defense charge, and Mr. Williams was in fact prejudiced thereby.
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> Further, both trial counsel testified at the Post Conviction Relief hearing that they were not familiar with the holding in Taylor. This case was tried on May 13-14,

> 2013. Taylor had been the law of our state for over 10 years. A reasonable criminal defense attorney should have been knowledgeable concerning the application of Taylor. In additional, even if trial counsel were not familiar with Taylor, the evidence in this case does not support mutual combat. Giving due deference to the credibility issues, the evidence does not indicate that Mr. Wilson and Mr. Williams intended to engage in mutual combat. The evidence did not support mutual combat, and trial counsel should have objected to such a charge. Under this charge, the jury was unable to fairly consider the Defendant's claim of self-defense.
>
> The Applicant has, therefore, met his burden of proof with respect to the Mutual Combat charge.

(App. pp. 912-913). The fact that Respondent relied on a combination of self-defense and accident enhances the prejudice resulting from the unwarranted mutual combat charge as the charge negates both. If Respondent had engaged in mutual combat, he would not be without fault and would not be entitled to self-defense. If Respondent was not acting lawfully in self-defense because of mutual combat, he would not be entitled to an accident defense. Respondent, however, was not engaged in mutual combat. The unwarranted mutual combat instruction negated both self-defense and accident.

In order to claim self-defense one must be without fault in bringing on the difficulty. State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). As the courts found in Taylor and Bowers, the PCR judge correctly found that the unwarranted mutual combat charge negated the self-defense claim as to the no fault requirement. The burden of proof was impermissibly shifted to Respondent to prove self -defense when the self-defense charge was negated by the unwarranted mutual combat charge. In Campbell v. State, 441 S.C. 361, 372, 893 S.E.2d 492, 497 (Ct. App. 2023), the South Carolina Court of Appeals wrote, "In Taylor, our supreme court found that the burden of proof impermissibly shifted to the defendant to prove self-defense when a self-defense 'charge was negated by the court's *unwarranted* charge on mutual combat.' 356 S.C. at 235, 589 S.E.2d at 5 (emphasis added)."

Campbell is distinguished from the present case as well as from Taylor and Bowers because in Campbell the court found that the mutual combat charge was warranted writing:

> In the present case, the State presented evidence to support a jury charge on mutual combat. Because the charge was warranted, Campbell's trial counsel was not deficient in failing to object to its reading alongside the circuit court's jury charge on self-defense. See Jackson, 384 S.C. at 38 n.5, 681 S.E.2d at 22 n.5 (clarifying that when "there [is] no evidence [a] victim [is] willing to engage in mutual combat[,]" charging mutual combat and self-defense creates unfair prejudice; however, "mutual combat and self-defense are [not] mutually exclusive" when mutual combat is supported by the evidence).

Campbell v. State, 441 S.C. at 372, 893 S.E.2d at 498. Unlike Campbell, in the present case the State failed to present evidence to support a jury charge on mutual combat. Charging mutual combat and self-defense in the present case created unfair prejudice.

The present case has the added element of an accident defense. An accident defense requires the element of acting lawfully. The unwarranted mutual combat charge, however, negated the element of acting lawfully in self-defense. As a result, the unwarranted mutual combat charge also negated the accident defense. The accident defense was unavailable without the predicate acting lawfully in self-defense. With the self-defense claim negated by the unwarranted mutual combat charge, the accident defense was also negated and the jury could not find that the shootings were accidental. As with the proper self-defense charge, the proper accident charge did not cure the prejudice. Charging mutual combat and self-defense and accident in the present case created unfair prejudice. Williams met his burden in showing prejudice resulting from the failure to object to the unwarranted mutual combat instruction. The PCR judge correctly granted relief.

There is evidence in the record to support the PCR judge's finding that, under the second prong of the Strickland test, the trial lawyers' performance in failing to object to the mutual

combat jury instruction resulted in prejudice. The unwarranted charge negated both the self-defense claim and the defense of accident. There is a reasonable probability that, but for trial counsel's failure to object to the unwarranted mutual combat charge, the result of the proceeding would have been different. Williams demonstrated both deficient performance and prejudice.

In finding Petitioner failed to show prejudice the Court of Appeals wrote:

> We hold there is no reasonable probability the result of the trial would have been different had trial counsel objected to the trial court's mutual combat charge given the evidence presented. See Jackson v. State, 355 S.C. 568, 573, 586 S.E.2d 562, 565 (2003) (reversing the PCR court's grant of PCR, finding that although counsel was deficient for failing to request a self-defense charge, the instruction would not have affected the outcome of trial given the overwhelming evidence presented of Jackson's guilt). Williams testified he was served notice of a July 13, 2010 court hearing for an order of protection Kerns sought against him and for child support. He stated Kerns had told him she was afraid of him and had called the police because she said he was threatening her during an argument they had in May 2010. Booker recalled Williams leaving her and her aunt abruptly at a club in the early morning of July 10, 2010. On the recording of her 911 call, Kerns stated she believed Williams was on her front porch. Seconds later, a loud noise was heard and Kerns stopped responding to the 911 operator. Kerns was shot through the front window of her home. Taken together with Williams's testimony, the 911 call contradicted his version of events. Wilson and Son testified that Wilson was in Son's room when Williams entered Kerns's house and began shooting, contradicting Williams's testimony that Wilson approached him outside the house with a gun and that the shooting occurred while they fought. Williams also switched cars when he returned home, led police on a high-speed chase, and stabbed himself with a knife after an officer hit his car with a patrol car to force him to stop. Additionally, Officers found bullets of the same caliber as those used in the shooting in Williams's house in Laurens. Given the evidence presented during the trial, we hold there is no reasonable probability the outcome of the trial would have been different had the trial court not given the mutual combat charge. Accordingly, we reverse the PCR court's grant of PCR.

Williams v. State, No. 2025-UP-077, at 6-7.

The Court of Appeals overlooked the specific impact of counsel's error on Petitioner's defenses of self-defense and accident and instead focused solely on the purported strength of the State's case. As a result of counsel's error the jury was prevented from considering both self-

defense and accident. None of the State's evidence discussed by this Court above precludes a finding by the jury that Petitioner acted in self-defense and then the gun discharged accidentally.

"In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). In Smalls the Court discussed Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998) and Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), and wrote, "Simmons and Smith illustrate the proper consideration of the strength of the State's case in the PCR court's analysis of prejudice: it is one significant factor the court must consider—along with the specific impact of counsel's error and other relevant considerations—in determining whether the applicant has met his burden of proving prejudice." 422 S.C. at 190, 810 S.E.2d at 844.

In discussing Simmons the Court in Smalls wrote:

> Ordinarily, the existence of "overwhelming evidence" does not automatically preclude a finding of prejudice. In Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998), for example, we found counsel was deficient for not objecting when the State in closing "improperly inject[ed] parole considerations into the jury's sentencing decision" and otherwise misstated the law regarding sentencing. 331 S.C. at 338-39, 503 S.E.2d at 167. Despite finding the evidence of Simmons' guilt was "overwhelming," we balanced the impact of counsel's error against the strength of the State's case on the point in question, and found Simmons had proved prejudice. We explained,
>
> [B]ecause the issue is whether the solicitor's improper argument prevented the jury from fairly considering [its sentencing options], the overwhelming evidence of petitioner's guilt does not eliminate the reasonable probability that the result of the trial would have been different had trial counsel objected to portions of the solicitor's closing argument. 331 S.C. at 340, 503 S.E.2d at 167.

422 S.C. at 189, 810 S.E.2d at 844.

As in Simmons, because the unwarranted mutual combat charge in the present case prevented the jury from considering self-defense and accident, any purported strength in the

State's evidence does not eliminate the reasonable probability that the result of the trial would have been different had trial counsel objected to the charge. The PCR judge correctly found that Williams met his burden of demonstrating prejudice as a result of counsels' failure to object to the unwarranted mutual combat charge.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of May, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
May 14 2025
SC Court of Appeals

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

Opinion No. 2025-UP-077 (S.C. Ct. App. Filed March 5, 2025)

Lower Court Case No. 2016-CP-23-07610

WILLIE M. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000796

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon Kaylee C. Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Willie M. Williams, #167044, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 14th day of May, 2025.

Kathrine H. Hudgins
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