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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County

The Honorable Deadra L. Jefferson, Trial Judge
The Honorable Robin B. Stillwell, PCR Judge

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

WILLIE M. WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2025-000929

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF THE ISSUE 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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether the Court of Appeals properly found that Petitioner failed to establish that there is a reasonable likelihood that the verdict would have been different had trial counsel objected to the mutual combat instruction considering the evidence presented at trial?

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Petitioner 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). (J.A. 680-685).

A jury trial was held May 13-16, 2013, with the Honorable Deadra L. Jefferson presiding. (J.A. 1). W. Townes Jones, IV, Esq., and Richard H. Warder, Esq., represented Petitioner on the charges. (J.A. 1). Assistant Solicitor Judith M. Munson prosecuted the case. (J.A. 1). The jury convicted as charged. (J.A. 660-662). Judge Jefferson sentenced Petitioner to life for murder, thirty (30) years for attempted murder, and ten (10) for unlawful conduct towards a child. (J.A. 677). She also imposed five (5) years, suspended to time served, on the weapons charge given that Petitioner had already served over a thousand days of time, and "under certain circumstances, the possession of a firearm charge is inapplicable ...." (J.A. 677). Petitioner timely appealed.

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

> I.
>
> 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?
>
> II.
>
> 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?

(J.A. 693).

The State filed its Final Brief in response on January 28, 2015. (J.A. 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. (J.A. 758-766). On May 18, 2016, this Court affirmed the convictions and sentences in an unpublished, per curiam opinion, *State v. Williams*, Op. No. 2016-UP-215 (S.C. Ct. J.A. filed May 18, 2016) in which it summarily addressed the merits of the hearsay issue but found the involuntary manslaughter instruction issue not preserved for a merits review. (J.A. 767-768). The remittitur was issued on June 3, 2016.

Petitioner filed his application for post-conviction relief on December 28, 2016. (J.A. 769). The State submitted its Return on September 13, 2017, filed October 5, 2017, moving to partially dismiss certain allegations and for a more definite statement. (J.A. 786-793). Petitioner filed an additional 2019 PCR action and amended the 2016 PCR application. (J.A. 777-785; 794-802). The 2019 action was then merged with the 2016 action. (J.A. 803-807). An evidentiary hearing was held before the Honorable Robin B. Stilwell on December 18, 2019, at the Greenville County Courthouse. (J.A. 808). Petitioner was present and represented by counsel, C. Rauch Wise, Esq. (J.A. 808). Assistant Attorney General Taylor Z. Smith represented Respondent. (J.A. 808). At the conclusion of the hearing, the PCR court took the matter under advisement and subsequently requested proposed orders from each party. On March 31, 2020, the PCR court issued an order denying post-conviction relief on all claims except one and granted relief on the grounds that Petitioner's defense attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction on mutual combat. (J.A. 897-921). The PCR court denied the State's motion to alter or amend the judgment. (J.A. 922-932). Both parties timely appealed. (J.A. 933-937).

The State filed a Petition for Writ of Certiorari on November 18, 2020, in this Court. Petitioner, through counsel, filed his Return on February 3, 2021. On cross appeal, Petitioner,

through counsel, filed his Petition for Writ of Certiorari on January 22, 2021. The State filed the Return on June 7, 2021. On June 29, 2021, this Court transferred the appeal to the Court of Appeals.

On November 14, 2023, the State's Petition was granted, and Petitioner's was denied. Additional briefing commenced with the State filing its Brief on March 28, 2024, and Petitioner filing his Brief on April 29, 2024. Oral argument was held on December 5, 2024, and subsequently on March 5, 2025, the Court of Appeals issued an opinion reversing the PCR Court's grant of relief. *Willie Marvin Williams v. State*, Unpublished Op. No. 2025-UP-077 (S.C. Ct. J.A. filed March 5, 2025). Petitioner filed a Petition for Rehearing on March 14, 2025, and the State submitted the Return as requested on March 31, 2025. The Petition for Rehearing was denied on April 14, 2025.

Petitioner filed his Petition for Writ of Certiorari in this Court on May 14, 2025. The State's Return to the Petition follows.

RESPONDENT'S STATEMENT OF FACTS

In the early morning hours of July 10, 2010, Petitioner 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 Petitioner and Kerns at the home in the past and Petitioner had moved out. Right before her murder, Kerns had petitioned for a restraining order against Petitioner and for child support. Petitioner had just been served with the papers and 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. (J.A. 80-82; 285-287; 290-295; 300-301; 313; 340; 508-513; 554-558; 564; 574).

The Night of July 9, 2010, into July 10, 2010 - Petitioner

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

Petitioner 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"). (J.A. 525-526). According to his testimony, he left that club "about 4:15, 4:30" and called Kerns but Kerns did not answer. (J.A. 526). He drove to the home he formerly shared with Kerns and saw a strange car in the driveway with out of state plates. (J.A. 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. (J.A. 285-287). After returning from going out to eat, the two

interacted with the children, talked, then went to bed. (J.A. 288). The children were Kerns' son "J" (age 9) and his baby sister (age 2). (J.A. 86-89). "J"' had his own bedroom where he slept, and his baby sister slept in Kerns' bedroom. (J.A. 288-289). Petitioner was the sister's father. (J.A. 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]. (J.A. 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 [Petitioner's car] parked outside the house. (J.A. 90-91). "J" was able to identify this car as his sister's dad's car. (J.A. 91).

Wilson testified that he was awakened by dogs barking and "some ruckus going on around the outside of the house." (J.A. 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. (J.A. 290-291). Kerns called 911 on her cellphone and told the operator that there was 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 then told the operator that Petitioner was on her front porch. On the 911 tape, one can hear Kerns telling Petitioner 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], J.A. 67-82; 540; 623).[1] Petitioner shot her through the front living room window. (J.A. 108-109, 120-122).

[1] The 911 call was entered at trial as State's Exhibit 1 and played for the jury. (J.A. 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).

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." (J.A. 291). Then he heard "banging on the outside" and Kerns shouting. Right after that, "it went like straight silent." (J.A. 292-293). Petitioner 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. (J.A. 109; 339; 391). Petitioner then entered the home through this opening in the window armed with his handgun. (J.A. 294-295). Wilson testified Petitioner fired shots and "[t]he first one-I guess the first one hit" and "took [Wilson] to the ground." (J.A. 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, and the sheriff came through the back door shortly afterwards. (J.A. 297). Wilson had suffered a grazing shot wound to the head. (J.A. 298-300).

"J" testified at trial that after he heard the first shot and saw Petitioner's car outside. He left his room crawling down the hallway and found his mom lying on the living room floor. (J.A. 92; 527). "J" stated he saw Petitioner standing over his mom shooting her. (J.A. 92).[2] "J" testified that Petitioner left "[a]fter he ran out of bullets." (J.A. 101). "J" explained that he knew Petitioner 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." (J.A. 104).

[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 the 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.

After committing the crimes, Petitioner left the residence, got into his Chrysler 300, and drove back to his home in Laurens County. Petitioner parked the Chrysler 300 in his garage, pushed a lawn mower behind the car, and then closed the garage door. (J.A. 561; 192; 576-577). He left in another vehicle, a Chevy Tahoe. (J.A. 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. (J.A. 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." (J.A. 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." (J.A. 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. (J.A. 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." (J.A. 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 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. (J.A. 108-109; 120-122).

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. (J.A. 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. (J.A. 95; 392-401). The murder weapon was not found either.

After interviewing Wilson and "J," investigators determined Petitioner had committed the crime. Police also interviewed members of Petitioner's family. Police determined Petitioner was a resident of Gray Court, in Laurens County. (J.A. 118; 323-325; 315-317; 331-333; 337; 360-364). 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. (J.A. 154). Deputy Joshua Garrison of the Laurens County Sheriff's Office observed Petitioner driving a champagne Chevy Tahoe, just after noon on July 10th. Petitioner had switched vehicles. (J.A. 155).[3] Deputy Garrison activated his blue lights to initiate a stop of Petitioner's vehicle; however, Petitioner "sped off at a high rate of speed." (J.A. 156). Garrison chased Petitioner for approximately twenty-six (26) miles at speeds in excess of one hundred and ten (110) miles per hour. (J.A. 156). The car chase ended when Deputy Garrison disabled Petitioner's vehicle by ramming it with his patrol car.

[3] Officer Greg Hawkins with the Greenville County Sheriff's Office warrants division testified he went to Laurens to Petitioner's home to find out if any of the five (5) vehicles that Petitioner had registered in his name were there. Officer Hawkins discovered a Chrysler 300 in Petitioner's garage when he arrived. The garage was closed, and a riding lawn mower was parked behind the Chrysler 300, *i.e*. Petitioner hid the car in his garage and attempted to make it look like he had not been anywhere in the Chrysler. (J.A. 320; 360-361; 576-577).

Petitioner was found inside the vehicle with a "knife sticking out of his chest," having tried to kill himself. (J.A. 157-158). The knife was removed from his chest, and he was apprehended. (J.A. 158). Petitioner was taken for treatment. (J.A. 327).

Autopsy and Forensics

An autopsy was performed on Kerns on July 12, 2010, by Dr. Michael Ward, Chief Medical Examiner for Greenville County. (J.A. 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." (J.A. 262-263). Dr. Ward testified that she would have dropped virtually immediately after the wound was inflicted. (J.A. 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 Petitioner's residence, they found a box of five federal .38 caliber bullets. These bullets were 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. (J.A. 341; 360-364; 404-417).

Petitioner's Testimony on What Occurred in the Home

Petitioner 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. (J.A. 529-530). He demonstrated to the jury a maneuver he claimed was in self-defense. (J.A. 536).

He stated: “Then the gun went off, pow.” (J.A. 536). Petitioner asserted that they “wrestled” and both fell through the glass into the home. (J.A. 537-538). Petitioner testified that the man “got away from me” perhaps dropped the weapon but then retrieved it. (J.A. 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. (J.A. 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. (J.A. 540). Petitioner admitted telling a friend, Tracy Irby, that he had “messed up,” and admitted the police chase. (J.A. 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 435-436 (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

The Court of Appeals properly found that Petitioner failed to establish that there is a reasonable likelihood that the verdict would have been different had trial counsel objected to the mutual combat instruction considering the evidence presented at trial.

Petitioner challenges the Court of Appeals' reversal of the PCR Court's grant of relief. The PCR court found that "trial counsel was ineffective for failing to object to the jury charge on mutual combat," and "that the mutual combat charge negated the self-defense charge and therefore prejudiced Williams." *Willie Marvin Williams v. State*, Unpublished Op. No. 2025-UP-077 (S.C. Ct. J.A. filed March 5, 2025). "The PCR court also found a reasonable criminal defense attorney should have been aware of the *Taylor* case [*State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003)] and that even if they were not aware of *Taylor*, trial counsel should have objected to the mutual combat charge because the evidence did not support mutual combat." *Id*.

The Court of Appeals reversed the PCR Court finding that "trial counsel's deficient performance" did not prejudice Petitioner, and subsequently addressed the evidence presented at Petitioner's trial, finding that "there is no reasonable probability the outcome of the trial would have been different had the trial court not given the mutual combat charge." *Willie Marvin Williams v. State*, Unpublished Op. No. 2025-UP-077 (S.C. Ct. J.A. filed March 5, 2025). In contrast, the PCR Court focused on counsel's deficiency and the legal principle that mutual combat generally negates self-defense, however, did not consider the facts of the individual case in assessing prejudice. In accordance with *Strickland*, the Court of Appeals disposed of the ineffectiveness claim by determining that Petitioner failed to establish sufficient prejudice. *See Strickland*, at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.").

This Court need not address Petitioner's request for this Court to "further clarify when mutual combat should not be charged." (Petition, at 6). Establishing whether it was improper to charge mutual combat under the circumstances is not dispositive of the prejudice inquiry. Petitioner appears to ask this Court to create a circumstance that warrants a presumption of prejudice, which even under the circumstances recognized in both *Strickland* and *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039 (1984),[4] is "an extremely high showing for a criminal defendant to make" and the "standard [is] only used for those cases where counsel fails to 'function in any meaningful sense as the Government's adversary.' " *Nance v. Ozmint*, 367 S.C. 547, 552, 626 S.E.2d 878, 880 (2006) (citing *Brown v. French*, 147 F.3d 307, 313 (4th Cir.1998) and *Fla. v. Nixon*, 543 U.S. 175, 190, 125 S. Ct. 551, 562 (2004)). "[T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland* at 696.

Despite Petitioner's focus on the deficiency prong, the basis of relief hinges on demonstrating prejudice which requires consideration based upon the totality of the evidence. *Strickland*, at 695. The Court of Appeals properly addressed the evidence before the jury and pointed to the following evidence that contradicted Petitioner's self-defense theory:

> 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.

[4] In *Cronic*, the United States Supreme Court identified that prejudice is presumed when the defendant is completely denied counsel "at a critical stage of his trial," as well as when there has been a constructive denial of counsel, *i.e*., when a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing," thus making "the adversary process itself presumptively unreliable." *Nance,* 367 S.C. at 552, 626 S.E.2d at 880 citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2039. Additionally, the *Cronic* Court identified certain instances "when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Nance,* 367 S.C. at 552, 626 S.E.2d at 880 citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2039.

> 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.

The PCR Court made a similar prejudice analysis in addressing a different claim:

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

(J.A. 908).

And that does not reference his admission of having "messed up," (J.A. 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."). Yet, the PCR Court did not apply the same evidence to the prejudice analysis in regard to the mutual combat charge. The PCR Court simply relied on deficiency to dispose of the ineffectiveness claim despite finding that Petitioner had failed to establish prejudice on a different claim.

Notably, the Court of Appeals found *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003) to be instructive. 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," but disagreed with the PCR court that the deficiency resulted in *Strickland* prejudice when the whole of the record was considered, concluding that "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." *Jackson*, 355 S.C. at 572-573, 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 Petitioner's "explanation of the events at the victim's home was not credible in light of the evidence." (J.A. 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 States case in light of all the evidence presented to the jury.' ") (quoting *Smalls,* 422 S.C. at 188, 810 S.E.2d at 843.

In reviewing the evidence before the jury, in addition to the PCR Court's contradictory findings, the Court of Appeals properly reversed the PCR Court's grant of relief in concluding that Petitioner failed to establish sufficient *Strickland* prejudice

CONCLUSION

For all the foregoing reasons, Respondent respectfully asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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