Lawton L. Holloway #379523
Perry C.I. , Q1B 115
430 Oaklawn Road
Pelzer, S.C. 20669

September 24, 2025

S.C. Court of Appeals
Office of the Clerk
Jenny Abbott Kitchings, Clerk
1220 Senate Street
P.O. Box 11629
Columbia, S.C. 29201

RE: Lawton L. Holloway v. State
Appellate Case no. 2023-001372

Dear Honorable Clerk:

Enclosed, please find correspondence and filings which I have mailed to Wanda H. Carter, Intern Chief Appellate Defender in reference to the above-referencer case now before the S.C. Court of Appeals. I respectfully ask that you file same with the Court as receord of my efforts to communicate to Ms. Carter my wishes concerning my appeal. By copy of this letter, I have also mailed the same to the S.C. Attorney General of record Joshua A. Edwards.

I thank you and should you have any questions, please do not hestitate to contact me.

Sincerely yours,
Lawton L. Holloway

cc: Files
Whanda H. Carter
Joshua A. Edwards

Lawton L. Holloway #379523
Perry C.I., Q1B 115
430 Oaklawn Road
Pelzer, S.C. 29669

September 24, 2025

Wanda H. Carter, Intern Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

RE: Lawton L. Holloway v. State
Appellate Case No. 2023-001372

Dear Ms. Carter:

The S.C. Court of Appeals on July 17, 2025 issued an Order denying the petition for writ of certiorari and motion to be relieved as counsel, which you submitted dated February 5, 2024, and directed you to address the following question and any other questions of arguable merit:

> Did the PCR court err in dismissing Petitioner's ineffective assistance of counsel claim in which Petitioner alleged his counsel erroneously failed to argue trespassing and the defense of habitation as grounds for immunity pursuant to the Protection of Persons and Property Act?

See Attached Exhibits Pages 9 and 10.

By letter dated July 28, 2025, which I also filed with the Clerk of Court, notifying you of all the other questions of arguable merit which I need to be raised in my petition for writ of certiorari. See Attached Exhibits Pages 11 through 33.

Dated September 17, 2025 you filed another Petition for Writ of Certiorari on my behalf essentially repeating the exact same argument which you stated in the petition which you filed dated February 5, 2024, and which was subsequently denied by the Court in its order dated July 17, 2025. Except for the rearranging of words in the

underlined question presented, it is clear that all you did was copy the same pages, with the same page number. You just put a different date on the petition. See Attached Exhibits Pages 39 through 42.

Furthermore, in your letter to me dated September 17, 2025, you errounsly stated with emphasis, that the Court issued an order requiring the filing of a merit petition "only" on one issue. This is incorrect. In its Order, the Court stated "**to adress the following question and any other questions of arguable merit.**" See Attached Exhibits Pages 9 & 10, and Page 34.

Ms. Carter is it your intention to deny the Order of the Court and deny me the right to present questions of arguable merit, which have been preserved for appeal, to the Court of Appeals? I specifically asked of you in my letter to you dated July 28, 2025, for permission to submit a hybrid brief/petition, if you did not include the issues which I presented, in your petition. You made no mention of requesting the Court for permission to allow me to file a pro se petition, and you failed to raise any of the issues in the petition which you filed. Now I am left in the position of being denied the right to present all perserved issues of arguable merit to the Court of Appeals. This is of no fault of my own. I presented these issues to you within a timely manner before you filed the petition dated September 17, 2025.

The Court of Appeals denied this petition for a reason, and for good reason directed you to file a petition to "address the following question **and any other questions of arguable merit.**" Why then did you turn around and file the exact same petition?

I am respecfully asking of you to please file a petition for writ of certitorari on my behalf, raising not only the question directed by the Court of Appeals in its Order, but also the other questions of arguable merit which I have submitted to you in my letter dated July 28, 2025. See Attached Exhibits Pages 11 through 33.

However, if it is your intent not to do so, please obtain the permission of the Court of Appeals for me to file a pro se petition addressing these other questions of arguable merit?

Thank you and I eagerly await your reply.

S/ Lawton L. Holloway
Lawton L. Holloway, #379523

CC: File
Clerk, S.C. Court of Appeals
S.C. Attorney General of Record
Joshua A. Edwards, Esquire

ATTACHED EXHIBITS

PAGES 1 THROUGH 43

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ARGUMENT

Trial counsel erred in failing to raise the trespassing and habitation defense issues as part of the immunity from prosecution claim presented at the Castle Doctrine hearing because the exclusion of these two matters prevented legal review of the same on direct appeal.

Petitioner was tried by jury and found guilty on the offenses of murder and possession of a weapon during the commission of a violent crime charged against him. A pre-trial hearing was held on petitioner's claim of immunity from prosecution under the Protection of Persons and Property Act. See S.C. Code Ann. §16-11-440 (2015). Petitioner testified that on the night in question, Jeremy Bell was visiting at his home when an argument erupted between them. Petitioner explained that he made Bell exit his home thereafter, but later realized that Bell re-entered his home minutes later without his permission. Petitioner stated that after he found Bell back inside of his home, Bell threatened to rape his (petitioner's) partner and daughter, and then Bell approached and threatened to kill him. Petitioner stated that he stabbed Bell in self-defense. App. 68, l. 23 – p. 95, l. 23. Hence, the basis for petitioner's Castle Doctrine defense. After the Castle Doctrine pre-trial hearing was held in the case, the trial judge denied petitioner's request for immunity from prosecution. App, 147, l.3 - p. 152, l.15.

On direct appeal, appellate counsel argued that the trespassing and habitation defense issues were connected to the Castle Doctrine claim presented in the case. Appellate counsel argued that petitioner reacted in self-defense since Bell was in petitioner's home unlawfully as a trespasser. Appellate counsel's argument follows:

> Also under the "another applicable provision of law" language of S.C. Code Ann. §16-11-450(A), Appellant was entitled to the defense of habitation. The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d

321, 323 (2007). "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." Rye, 375 S.C. at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Id. Rather, the defense of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. "The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was 'defending himself from imminent attack on his own premises.' " State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25). Although self-defense and habitation are analogous, the defenses are not identical. Rye, 375 S.C. at 124, 651 S.E.2d at 323.

When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion. State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936).

A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.

State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923). In State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), this Court held the defendant was entitled to a jury instruction on the defense of habitation. App. 552-553.

Note that the trial judge issued a jury instruction on the defense of habitation. App. 516, lines 1-12.

The South Carolina Court of Appeals ruled on this on direct appeal as follows:

> To the extent [petitioner] argue[s], the trial court erred in failing to grant immunity based on the defense of habitation…we find [the argument is] not preserved for review because…[it was] not raised to and ruled upon by the trial court. App. 588.

On appeal, appellate counsel correctly argued trespassing and the defense of habitation in connection with the immunity claim, but because trial counsel erred in failing to preserve the trespassing and habitation defense matters, the appellate court was prohibited from reviewing the merits of the same on direct appeal. Had trial counsel raised these issues at trial, then the matters would have been preserved for appellate review and the appellate court could have ruled on the same.

During the PCR hearing held in the case, petitioner testified that Bell was a trespasser and not lawfully inside his (petitioner's) home, but that his trial lawyers failed to raise the trespassing and habitation defense issues during the pre-trial immunity hearing. App. 627, l. 12, l.25 - p. 632, l.25; App. 636 , l.11 - p. 637, l.7.

Note that the defense of habitation was presented in trial counsel's written pre-trial immunity motion, but neither that defense (habitation) nor the trespassing issue ended up as matters presented during the pre-trial hearing. See trial counsel's immunity argument at App. 137, l. – p. 138, l.1 and App. 144, l.19 - p. 145, l.13.

Trial counsel testified at the PCR hearing and stated that the trespassing issue was considered in the case. App. 666 lines 8-23. However, trial counsel failed to develop the trespassing and habitation defense issues at the pre-trial hearing.

Trial counsel erred in failing to present the trespassing and habitation defense issues as part of the immunity from prosecution claim advanced at the pre-trial Castle Doctrine hearing held in the case, which in turn precluded a review of these matters on direct appeal. As a rule, a

contemporaneous objection is required to properly present errors for appellate review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). Trial counsel's omission in this regard constituted ineffective legal assistance in violation of the Sixth Amendment and Strickland v. Washington,466 U.S. 668 (1984), such that but for the error, a reasonable probability exists that the outcome of petitioner's trial and/or direct appeal would likely have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this petition be granted in order to allow full briefing on the above-raised issue.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of February, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lawton Leroy Holloway states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Frank R. Addy, which was held on June 20, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Lawton Leroy Holloway.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of February, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 5th day of February, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

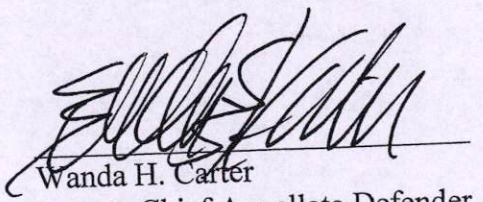
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Johnson Petition for Writ of Certiorari and Appendix in the above referenced case have been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Lawton Leroy Holloway, #379523, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 5th day of February, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

Lawton Leroy Holloway, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2023-001372

ORDER

Petitioner's counsel has submitted a petition for a writ of certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), and a motion to be relieved as counsel. The panel voted to deny the motion to be relieved as counsel and directs the parties to address the following question and any other questions of arguable merit:

> Did the PCR court err in dismissing Petitioner's ineffective assistance of counsel claim in which Petitioner alleged his counsel erroneously failed to argue trespassing and the defense of habitation as grounds for immunity pursuant to the Protection of Persons and Property Act?

Petitioner shall serve and file a petition for writ of certiorari on this question within thirty days of the date of this order. Thereafter, Respondent shall have thirty days to serve and file its return.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

FILED
Jul 17 2025

cc:
Joshua Abraham Edwards, Esquire
Wanda H. Carter, Esquire
Lawton Holloway, 00379523
The Honorable Frank R. Addy

Lawton L. Holloway #379523
Perry Correctional Institution
Q1B115
430 Oaklawn Road
Pelzer, SC 29669

July 28, 2025

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

RE: Lawton L. Holloway v. State
Case No.2023-001372

Dear Honorable Clerk:

In response to the order dated July 17, 2025 in the above referenced case, I have mailed the enclosed cover letter and documents to Wanda H. Carter, Esquire. As a means to keep things transparent, please file same in my file of this case in your office. I do understand that I am not required to file attorney communication with the court, but as stated, this is an effort on my part to keep things transparent with Ms. Carter and what I am requesting of her.

Thank you, if you have any questions, please do not hesitate to contact me.

Sincerely,

Lawton L. Holloway

Lawton L.Holloway

cc. File
Wanda H.Carter

Lawton L. Holloway #379523
Perry Correctional Institution Q1B-115
430 Oaklawn Road
Pelzer, SC 29669

July 28, 2025

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

RE: Appellate Case No. 2023-001372

Dear Wanda H. Carter Esquire;

I received the order from the South Carolina Court of Appeals, filed July 17, 2025. I am aware that the order directs the parties to address the following question and any other questions of arguable merit.

Please find a list of the questions that I would like addressed. I'm requesting permission to submit a hybrid brief if some of the issues are not able to be included in the brief that you submit:

1. Did the PCR court err in dimissing Petitioner's ineffective assistance of counsel claim in which Petitioner alleged his counsel erroneously failed to argue trespassing and the defense of habitation as grounds for immunity pursuant to Protection of Persons and Property Act?

2. Did the Trial Court err when it provided segmented instructions because jury instructions must be taken as a whole?

3. Did the PCR Court err when it held the applicant's complaint that Attorney Price failed to disclose his terminal illness was without merit?

4. Counsel's failure to object to jury charge on implied malice based on the use of a deadly weapon under State v. Belcher,385 S.C. 597,610,685 S.E.2d 802, 809 (2009).

5. Counsel's failure to object to the implied malice charge on Due Process Grounds.

6. Case Law existing at the time of Holloway's trial was sufficient to inform Trial Counsel of the need for an objection to the implied malice charge as a violation of Due Process.

7. The Applicant is entittled to retroactive application of State v. Burdette, 427 S.C. 490(S.C.2019).

These issues are preserved.

Please review the PCR Judges Order in the case of Mitchell Monroe Weatherall v. State, 2021-CP-26-4551, copy enclosed. This case is identical to my case in regards to the bias burden shifting jury instructions and the implied malice instructions. Also for your review, I am enclosing a copy of the Applicant's Memorandum on issues of malice charge to the jury, which was filed in that case. Specifically, see page 3, no. 2. I look forward to speaking with you concerning these matters.

Respectfully,

Lawton L. Holloway

Lawton L. Holloway

insuff evid of malice

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	2021-CP-26-4551
MITCHELL MONROE WEATHERALL, (371932)	)	
v.	)	Applicant's Memorandum
	)	on Issue of Malice Charge to Jury
STATE OF SOUTH CAROLINA	)	

I. COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO IMPLIED MALICE CHARGE AS A VIOLATION OF DUE PROCESS.

In Weatherall's case the trial judge charged implied malice based on the testimony that the victim died as the result of being struck on the head with a bottle. A trial judge's defective malice charge, which was deemed unconstitutional in Sandstrom v. Montana, 442 U.S. 510 (1979). Trial counsel failed to make raise an objection to the court's malice charge. While Weatherall's case was pending on appeal the supreme court ruled that an implied malice charge constitutes improper burden shifting and inappropriate in any case."We decide this issue solely under the common law; pursuant to our policymaking role under the common law, we hold, regardless of the evidence presented at trial, a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon. State v. Burdette, 427 S.C. 490 (S.C. 2019).

Weatherall's jury charge:

> 8 Malice may be inferred from conduct showing a total
> 9 disregard for human life. Inferred malice may also arise when
> 10 the deed is done with a deadly weapon. A deadly weapon is any
> 11 article, 1nstrument, or substance, which is likely to cause
> 12 death or great bodily harm. Whether an instrument has been
> 13 used as a deadly weapon depends on the facts and circumstances
> 14 of each case. Ordinary objects may become deadly weapons when
> 15 the facts show that they have been used to infl1ct serious
> 16 bodily harm or death. If facts are proved beyond a reasonable
> 17 doubt, sufficient to raise an inference of malice to your
> 18 satisfaction, this inference would be simply an evidentiary
> 19 fact to be considered by you along with the other evidence in
> 20 the case and you may give it the weight you decide it should
> 21 receive.

T. Page 398.

23 THE COURT: All right. Any exceptions to the jury charge
24 that have not previously been raised by the State?
25 MS. LIVESAY: No, sir.
1 THE COURT: Any by the Defense?
2 MR. GARDNER: No new ones, Your Honor, just renew the old
3 ones.
4 THE COURT: All right. Those are so noted and I'll stick
5 with my prior rulings on those.

T. 398-400.

Counsel failed to make an objection to the implied malice charge. (See transcript pages 354-359; 398-400.)

1. THE IMPLIED MALICE CHARGE VIOLATES DUE PROCESS UNDER State v. Belcher, 385 S.C. 597 (2009).

Bell's testimony that everyone was getting high and Weatherall got angry and something ensued and the victim was hit over the head and no one noticed he was dead for days is sufficient to mitigate, reduce, excuse, (not justify) the homicide making an implied consent charge inappropriate:

Testimony of Marcus Bell:

16 Basically, he told me was I don't want to
17 say an altercation, but a misunderstanding about the victim
18 having some money to purchase more drugs, this, that, and the
19 third because they were all in the room, Mr. Weatherall and a
20 couple of other people were having, you know, just sitting
21 down, getting high, just enjoying themselves, and the drugs
22 were running out, the money was getting low, and the victim
23 supposedly claimed he had more money to get more drugs. Come
24 to find out, that wasn't the case. Mr. Weatherall said, hey,
25 you know, kind of got angry and something ensued to the point
1 to where a bottle was grabbed and hit the victim across the
2 head, and come to find out, like they didn't even notice that
3 the victim was, was deceased until some days later and which
4 was ironic to me because I was like, well, dang, how did you
5 not know that the person was dead, you know, in the room with
6 you. But to make a long story short, when they did realize it
7 that the victim was dead, you know, they tried to clean it up,
8 I guess.

T. 272-273

Involuntary Manslaughter

> In State v. Scott, we repeated the general rule that involuntary manslaughter is "the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others." 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015) (*quoting* Sams, 410 S.C. at 309, 764 S.E.2d at 514). Involuntary manslaughter mandates a showing of criminal negligence, defined as "the reckless disregard of the safety of others." S.C. Code Ann. § 16-3-60 (2015). "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007).

State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (S.C. 2019) *citing case law applicable at the time of Weatherall's trial.*

Bell's testimony supports heat of passion or accident and shows no intent to kill (reduce or mitigate), and therefore, the implied malice charge was inappropriate and counsel required to enter an objection to the malice charge and preserve the issue for appeal.

2. CASE LAW EXISTING AT THE TIME OF WEATHERALL'S TRIAL WAS SUFFICIENT TO INFORM TRIAL COUNSEL OF THE NEED FOR AN OBJECTION TO THE IMPLIED MALICE CHARGE AS A VIOLATION OF DUE PROCESS.

At the time of Weatherall's trial there were existing state and federal cases supporting an objection to the implied malice charge. Hall v. Kelso, 892 F.2d 1541 (11th Cir. 1990); Gibson v. State, 355 S.C. 429 (S.C. 2003). In his concurring opinion in Gibson, Justice Pleconies indicated that a improper malice charge issue presented as a Due Process violation could potentially be given retroactive application in the collateral-review process (PCR):

Justice Pleconies concurring opinion in Gibson set out the Due Process issue in 2003:

> C. Conclusion
> I concur in the majority's decision to affirm the PCR orders denying Donnie and David post-conviction relief. Unlike the majority, I would not reach the retroactivity issue. Were I to find it necessary to reach the claim, I would employ a different analytical approach. In my opinion, whether to apply a new decision retroactively under Teague v. Lane is determined by applying the Teague v. Lane exceptions to that new decision. Therefore, I would analyze the Sandstrom decision to determine whether it met a

> Teague v. Lane exception. Only if I found that Sandstrom met one of these exceptions would I engage in a review of the facts of the case in which the unconstitutional malice charge was given to determine, on a case-by-case basis, whether the defendant in that pre-*Sandstrom* case had been so prejudiced by the charge that he was entitled to a new trial.

And also Justice Pleconies' Footnote 4:

> I recognize the validity of Donnie's contention that Sandstrom v. Montana is merely a logical extension of In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) and Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975). *See, e.g.* Francis v. Franklin, 471 U.S. 307, 326, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985) ("Sandstrom v. Montana made clear that the Due Process Clause of the 14th Amendment prohibits the State from making use of jury instructions that have the effect of relieving the State of the burden of proof enunciated in In re Winship on the critical question of intent in a criminal prosecution. Today we reaffirm the rule of Sandstrom and the wellspring due process principle from which it was drawn"). **Had Donnie framed his claim as a violation of his due process rights, rather than as a violation of his sixth amendment right to counsel, I would reach the issue of retroactivity under Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). Were I to reach this issue, I would not necessarily find that Sandstrom did not apply retroactively.** *See, e.g.*, Hall v. Kelso, 892 F.2d 1541 (11th Cir.1990).

Gibson v. State, 355 S.C. 429 (S.C. 2003).

In Hall the Eleventh Circuit Court of Appeals, reversed the Georgia court where a jury charge burden-shifted on the issue of intent. Hall found the burden shifting charge violated Due Process. Gibson and Hall were sufficient to inform Weatherall's trial counsel of the need for an objection to the implied malice charge.

3. THE APPLICANT IS ENTITLED TO RETROACTIVE APPLICATION OF STATE V. BURDETTE, 427 S.C. 490 (S.C. 2019).

While Weatherall's case was still pending on direct appeal Burdette held that implied consent was no longer good law in South Carolina: "trial courts shall not instruct a jury that the element of malice may be inferred when the deed is done with a deadly weapon." State v. Burdette, 427 S.C. 490, at 503 (S.C. 2019). Burdette was decide solely under the common law; pursuant to the supreme court's policymaking role under the common law.

Weatherall's trial was March 20-23, 2017

Weatherall's final brief on appeal was June 19, 2019
State v. Burdette, issued July 31, 2019 (Couldn't raise on appeal - unpreserved)
Weatherall's appeal decided August 19, 2020 (Ct. App. Opinion No. 5763)

Retroactivity

Burdette addressed retroactivity directly:

> Our ruling today is effective in this case and in those cases which are pending on direct review **or are not yet final, so long as the issue is preserved**. *See* Griffith v. Kentucky, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (holding "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases ... pending on direct review **or not yet final**"). State v. Burdette, 427 S.C. 490 (S.C. 2019). **Emphasis added.**

State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (S.C. 2019).

Burdette expressly holds that relief was retroactive to all cases pending direct appeal **but not on PCR**. "However, today's ruling will not apply to convictions challenged on post-conviction relief. *See* Belcher , 385 S.C. at 613, 685 S.E.2d at 810 (*citing* Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989))." State v. Burdette, 427 S.C. 490 (S.C. 2019) **Emphasis added.**

ARGUMENT FOR RETROACTIVE APPLICATION OF DUE PROCESS ISSUE

Weatherall's claim is entitled to a retroactive application of Burdette because Burdette was decided solely on policy grounds and therefore not clearly based on Due Process. Weatherall's Due Process claim is distinguishable and therefore not subject to the bar to retroactivity of Burdette. To the extent that Burdette rests on Due Process then Weatherall is entitled to retroactive application under Gibson, Hall, Teague and Sandstrom.

The petition in Burdette did not raise, nor did the supreme court consider, an argument for the retroactive application of constitutional rules in our state collateral-review process (PCR). The issue raised in Burdette was the application of Belcher based on the existence in the record of evidence that reduced, mitigated, excused, or justified the homicide. The court's opinion gratuitously added that Burdette was not retroactive to cases on collateral review even though the issue was not raised by the parties or the facts.

FN 4, Gibson v. State, *Justice Pleconies concurring opinion*

The proper legal framework for the retroactive application of Burdette in the present case, as a matter of federal law is set forth in the attached article (incorporated herein by reference): "*Finality, Comity, and Retroactivity in Criminal Procedure: Reimagining the Teague Doctrine after Edwards v. Vannoy*" Standford Law Review, Vol. 73, June 2021.

HARMLESS ERROR

The burden is on the state to show the burden-shifting instruction on intent was harmless:

> Although the Supreme Court initially left open whether a burden-shifting error may be harmless, the Court has now traveled the path trod by this court when, in Davis v. Kemp, 752 F.2d 1515, 1520-21, we held that a burden-shifting error may be held harmless if it is harmless beyond a reasonable doubt. Rose v. Clark, 478 U.S. 570, 579-82, 106 S.Ct. 3101, 3106-08, 92 L.Ed.2d 460 (1986). In Davis v. Kemp, this court identified two situations where harmless error analysis would be appropriate: where the evidence of the defendant's intent was overwhelming or where intent was not at issue in the trial. 752 F.2d at 1521. *See also*, Bowen v. Kemp, 832 F.2d 546, 548-49 (11th Cir.1987), cert. denied, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988). Here not only was intent at issue, it was the central issue at trial. In Carter v. Montgomery, 769 F.2d 1537, 1541 (11th Cir.1985), **we noted that where mens rea was at issue, the state must clear a high hurdle to show that the error of the burden-shifting instruction on intent was harmless because a defense of lack of intent "substantially reduces the extent to which evidence against the defendant can be considered to be 'overwhelming.' "...**

Hall v. Kelso, 892 F.2d 1541, at 1546 (11th Cir. 1990) **Emphasis added.**

Based on the foregoing, counsel's failure to object to the improper malice charge in Weatherall's case constituted error that prejudiced Weatherall's case. Weatherall meets his burden under Strickland v. Washington, 466 U.S. 668 (1984).

Respectfully submitted,
s/J. Falkner Wilkes
J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
Counsel for Mitchell Weatherall

October 22, 2024.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)
) 2021-CP-26-4551
MITCHELL MONROE WEATHERALL)
(371932), APPLICANT)
v.) ORDER GRANTING
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)
RESPONDENT)

The parties appeared before the Court at the Horry County Courthouse on October 29, 2024, for an evidentiary hearing on an application for post-conviction relief. As a result of that hearing the Court hereby grants the Applicant a new trial.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the department of corrections. Applicant was indicted for murder by the Horry County Grand Jury at its April 2014 term. Applicant was represented by Attorney Johnny Gardner, and Assistant Solicitor Nancy Livesay, of the Fifteenth Circuit Solicitor's Office, represented the state. On March 20, 2017. Applicant proceeded to a jury trial before the Honorable Benjamin H. Culbertson. On March 23, 2017, the jury convicted Applicant of murder. Judge Culbertson sentenced Applicant to a term of life imprisonment. Applicant appealed and the Court of Appeals affirmed. *State v. Weatherall, Op. No.* 5763 (Ct. App. filed August 19, 2020). The remittitur was issued on September 11, 2020.

On July 12, 2021, Applicant timely filed the present action for post-conviction relief. A hearing was held at the Horry County Courthouse on October 29, 2024. Applicant was represented by J. Falkner Wilkes, of Oakland, Mississippi. Bryan T. Hall, Asst. Atty. Gen, represented the State. After hearing the testimony and reviewing all of the evidence and matter of

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record properly before the Court the Court makes the following findings of facts and conclusions of law.

At the hearing the Applicant proceeded on four allegations of ineffective assistance of counsel: the failure to object to the trial court's implied malice jury charge; the failure to call witnesses to testify to Marvin McElveen's alleged confession of the murder; the failure to request further inquiry during the *Batson* hearing into the state's basis for striking a black juror; the failure to advise Applicant on the law of accomplice liability prior to his rejection of plea offers.

In a PCR action, Applicant bears the burden of proving the allegations in his/her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (*quoting* Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment." *Id.* (*citing* Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. I, 5 (2003) (*citing* Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; *see also* Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18,386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (*quoting* Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (*quoting* Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

1. COUNSEL'S FAILURE TO OBJECT TO JURY CHARGE ON IMPLIED MALICE BASED ON THE USE OF A DEADLY WEAPON UNDER STATE V. BELCHER..

In 2014, the Applicant and Helbert Woodbury (victim) checked into the Atlantic View Motel in Myrtle Beach. Others joined them for a week of partying, drug use and socializing. At some point during that week the victim was hit on the head with a bottle and died as a result. Apparently, nobody in the room noticed for days that the victim had died and the partying continued. Days later when someone noticed that the victim had died, the Applicant and others removed the victim's body from the room and hid it along a dirt road. The body was later discovered and the Applicant and Marvin McElveen ("Chicken") were arrested. Marcus Bell was Applicant's roommate for two weeks during the Applicant's pretrial detention in jail. Bell had no other connection to the events at the hotel. Bell testified that while cellmates the Applicant had confessed to hitting the victim on the head with a bottle. Bell's testimony was the only direct evidence that it had been the Applicant that had hit the victim with the bottle:

> 16 Basically, he told me was I don't want to
> 17 say an altercation, but a misunderstanding about the victim
> 18 having some money to purchase more drugs, this, that, and the
> 19 third because they were all in the room, Mr. Weatherall and a
> 20 couple of other people were having, you know, just sitting
> 21 down, getting high, just enjoying themselves, and the drugs
> 22 were running out, the money was getting low, and the victim
> 23 supposedly claimed he had more money to get more drugs. Come
> 24 to find out, that wasn't the case. Mr. Weatherall said, hey,
> 25 you know, kind of got angry and something ensued to the point
> 1 to where a bottle was grabbed and hit the victim across the
> 2 head, and come to find out, like they didn't even notice that
> 3 the victim was, was deceased until some days later and which
> 4 was ironic to me because I was like, well, dang, how did you
> 5 not know that the person was dead, you know, in the room with
> 6 you. But to make a long story short, when they did realize it
> 7 that the victim was dead, you know, they tried to clean it up,

8 I guess.

T. 272-273.

Based on largely on Bell's testimony the trial court charged the jury on implied malice based on the use of a deadly weapon:

> 8 Malice may be inferred from conduct showing a total
> 9 disregard for human life. Inferred malice may also arise when
> 10 the deed is done with a deadly weapon. A deadly weapon is any
> 11 article, instrument, or substance, which is likely to cause
> 12 death or great bodily harm. Whether an instrument has been
> 13 used as a deadly weapon depends on the facts and circumstances
> 14 of each case. Ordinary objects may become deadly weapons when
> 15 the facts show that they have been used to inflict serious
> 16 bodily harm or death. If facts are proved beyond a reasonable
> 17 doubt, sufficient to raise an inference of malice to your
> 18 satisfaction, this inference would be simply an evidentiary
> 19 fact to be considered by you along with the other evidence in
> 20 the case and you may give it the weight you decide it should
> 21 receive.

T. 398.

There was no objection from either defense counsel to the court's implied malice charge. At the PCR hearing Applicant's trial counsel failed to articulate any basis for their failure to object. The record from Applicant's trial shows no evidence of prior altercations between the Applicant and the deceased; was no evidence that the Applicant harbored any ill will towards the deceased prior to the incident; no evidence that the Applicant had armed himself with the bottle prior to the incident in preparation of harming the deceased; no evidence that the victim had been induced to come to the hotel for any ill purpose. The Applicant had no prior criminal record. The evidence showed that the Applicant, the victim, and others had all gone to the hotel just to engage in prolonged drinking, drug use, and socializing. There was no evidence that the Applicant had any intent to harm the victim prior to the argument and assault that led to the

victim's death. The day the deceased was hit with the bottle the Applicant, the deceased, and others were just sitting down, getting high, just enjoying themselves in the hotel room. As Bell testified, nobody in the room even noticed that the victim had died for several days. Had the striking of the deceased occurred in such a way as to demonstrate an intent to kill the victim someone in the room would have likely paid attention to the condition of the victim following the incident. Yet no one noticed the extent of the victim's injury for days. The evidence presented at trial therefore tended to mitigate or reduce the homicide.

In State v. Belcher the court held: "Having carefully scrutinized the historical antecedents to this permissive inference, we hold today that a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide." State v. Belcher, 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009)(*reversed on other grounds*). Belcher was the law at the time of the Applicant's trial. Counsel's failure to raise an objection to the trial court's implied malice charge was therefore error under the first prong of the *Strickland* analysis.

Errors, including erroneous jury instructions, are subject to harmless error analysis. Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008):

> When considering whether an error with respect to a jury instruction was harmless, we must "determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." State v. Kerr, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct.App.1998) (*citation omitted*). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *Id.* Thus, whether or not the error was harmless is a fact-intensive inquiry. State v. Jefferies, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994) ("We must review the facts the jury heard and weigh those facts against the erroneous jury charge to determine what effect, if any, it had on the verdict.") (*citation omitted*).

State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014).

While many murder prosecutions involve overwhelming evidence of malice apart from the use of a deadly weapon, the record in the Applicant's case reveals no such evidence. Here the record overall shows a lack of malice on the part of the Applicant and tends instead to mitigate or lessen the homicide. Through its jury charge on implied malice the trial court gave an example of conduct that the jury could consider when determining whether the State had proven the charge of murder. In doing so the trial court directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury. Given the lack of other evidence in record to establish malice, or the intent to kill the deceased, the court's implied malice charge was likely the basis for the jury's verdict. Because the Court can not conclude beyond a reasonable doubt that the error complained of did not contribute to the verdict the Court finds that the Applicant has satisfied the second prong of the *Strickland* analysis. I therefore find that the Applicant is entitled to a new trial.

2. COUNSEL'S FAILURE TO OBJECT TO THE IMPLIED MALICE CHARGE ON DUE PROCESS GROUNDS.

In addition to the foregoing, state and federal case law existing at the time of the Applicant's trial supported an objection to the implied malice charge on due process grounds. In Hall v. Kelso, 892 F.2d 1541 (11th Cir. 1990) the Eleventh Circuit Court of Appeals, reversed the Georgia court where a jury charge burden-shifted on the issue of intent. Hall found the burden shifting charge violated due process. An improper malice charge was also discussed as being a due process violation in Gibson v State, 586 S.E.2d 119, 355 S.C. 429 (2003) (*reversed on other grounds*). Gibson and Hall were sufficient to inform Applicant's trial counsel of the need for an objection to the implied malice charge on due process grounds. Here the burden-shifting implied

malice charge violated the due process clause of the constitution because it relieved the state of its burden of proving, beyond a reasonable doubt, that Applicant intentionally committed the homicide. Counsel's failure to raise an objection on due process grounds constitutes error under the first prong of the *Strickland* analysis. In considering the record as a whole, the court can not say beyond a reasonable doubt that the error did not contribute to the verdict. As to the due process issue the Applicant has satisfied the second prong of Strickland. I therefore find that the Applicant is entitled to a new trial.

3. RELIEF BASED ON THE HOLDING IN STATE v. BURDETTE, 427 S.C. 490, (S.C. 2019).

In addition to the foregoing, given the record as a whole I further find that the accuracy of the Applicant's conviction was seriously diminished by the court's charge allowing the jury to infer malice from the use of a deadly weapon. While Weatherall's case was still pending on direct appeal our supreme court held that regardless of the evidence offered at trial, trial courts shall not instruct a jury that the element of malice may be inferred when the deed is done with a deadly weapon. State v. Burdette, 427 S.C. 490, at 503 (S.C. 2019). Due to counsel's failure to object to the implied malice charge the issue was not preserved for direct appeal. Although the court in Burdette indicated that its holding would not apply convictions challenged on post-conviction relief, it cited Belcher and Teague v. Lane[1] in its analysis of retroactive application. In Gibson the court discussed Teague and the exceptions to the general bar on retroactive application of new procedural rules in criminal cases. In Gibson, the court considered whether the holding in Belcher should be applied retroactively to an improper implied malice charge in a

[1] Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).

post-conviction relief case. In its *Teague* analysis the court looked to whether the conviction was seriously diminished by the improper charge. Finding that the "jury heard plenty of testimony that established the malice element" the court in Gibson found that the facts failed to meet the Teague standard.

In Gibson the defendants admitted to killing the deceased with their own weapons. The defendants had a history of altercations with the deceased and had armed themselves prior to encountering the deceased. One of the defendants testified that he shot the victim while the victim was crouched down beside a car. Based on the overwhelming evidence of malice in the record the court in Gibson found that the improper implied malice charge did not diminish the accuracy of the convictions. In the Applicant's case the record shows no evidence of prior altercations between the Applicant and the deceased; no evidence that the Applicant harbored any ill will towards the deceased prior to the incident; no evidence that the Applicant had armed himself prior to the incident in preparation of harming the deceased; no evidence that the victim had been induced to come to the hotel for any ill purpose; and the Applicant had no prior criminal record. Overall, the record lacks evidence of malice or an intent to kill on the part of the Applicant. Applying the same Teague analysis as the court applied in Gibson, I find that the accuracy of the Applicant's murder conviction was seriously diminished by the court's charge that allowed the jury to infer malice from the use of a deadly weapon (the bottle). As a result, the Applicant is entitled to a retroactive application of the holding in Burdette and therefore granted a new trial.

4. FAILURE OF COUNSEL TO CALL WITNESS TOMMY BENTON

At the PCR hearing the Applicant presented the testimony of Tommy Benton. Prior to

Applicant's trial Benton had been the cell mate of Marvin McElveen (aka "Chicken"), one of the individuals "partying" in the hotel room with the Applicant and others when the victim was struck with a bottle.[2] Benton had no other connection to the events involving the victim's death and apparently had been released from jail prior to the Applicant's trial. At the PCR hearing Benton testified that while he and McElveen were cellmates in jail McElveen had confessed to being the one that had hit the victim on the head with the bottle.[3] Benton was subpoenaed by the defense and appeared at the Applicant's trial. When Benton and his mother Christie Hudson arrived at court they were met by attorney Bouchette in the hallway. Both Benton and Hudson testified that Bouchette told them that the Applicant was taking a plea and that Benton's testimony would not be needed. Once released from his subpoena Benton and his mother left the courthouse and returned home. Benton would have testified to the details of the McElveen's confession had he been called as a witness at the Applicant's trial. Benton and Hudson were both credible witnesses.

The defense theory of the case was that McElveen had hit the victim on the head with the bottle. Despite Benton's testimony being essential to the defense he was released from his subpoena and told that he could leave before the need for his testimony could have even been fully evaluated. Attorney Gardner could not give a reason why Benton was released by Bouchette prior to the close of the case, nor could he give a reason why the defense did not attempt to call

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[2] McElveen, also charged with murder in the case, was apparently in court and available during the Applicant's trial as he was identified as a potential witness during jury *voir dire*.

[3] Process server Melissa Bridges testified credibly to exhaustive attempts to locate and serve McElveen with a subpoena for the PCR hearing. I find that McElveen, as the declarant of an out of court statement, to be absent from the hearing and that the Applicant has been unable to procure McElveen's attendance or testimony by process or other reasonable means.

Benton as a witness. While attorney Bouchette testified that the decision was made not to put up any evidence and have last argument, that decision was clearly influenced by an erroneous belief that the State could use pending charges to impeach Benton's testimony. Bouchette testified that Benton "was facing or had pending some fairly gruesome felony charges that he was later convicted of that, perhaps, could have been, depending on the circumstances and different things, could have been brought up by the state." According to Bouchette, this made Benton "a risky witness." Bouchette's analysis of Benton's testimony was based on a misunderstanding of the law. Clearly, under Rule 609, SCRE, Benton's pending charges could not have been used to impeach his testimony, or otherwise "bought up by the state" as Bouchette believed. Rule 609, pertaining to impeachment, is fundamental to the practice of criminal law. Bouchette's apparent misunderstanding of Rule 609 resulted in his failure to properly assess the State's ability to impeach Benton's testimony, which in turn prevented a proper evaluation of the value of Benton's potential testimony. Because counsel's decision not to call Benton as a witness was influenced by his misunderstanding of Rule 609, SCRE, it cannot be considered a valid strategy.

Under Stickland the Applicant is required to demonstrate that counsel's performance was deficient with respect to prevailing professional norms or duties. Strickland, 466 U.S. at 688, 104 S.Ct. 2052. These duties include the duty to investigate and to research a client's case in a manner sufficient to support informed legal judgments. Winston, 683 F.3d at 504. Counsel's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance." Hinton v. Alabama , 571 U.S. 263, 134 S.Ct. 1081, 1089, 188 L.Ed.2d 1 (2014) (*per curiam*); *see also* Williams v. Taylor , 529 U.S. 362, 395, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (holding that

counsel provided ineffective assistance at sentencing because they failed to investigate records due to their mistaken understanding of state law on accessing such records). Counsel must demonstrate a basic level of competence regarding the proper legal analysis governing each stage of a case. *See* Hinton, 134 S.Ct. at 1089 (holding that counsel rendered ineffective assistance by failing apparently to understand relevant law relating to expert testimony at trial). United States v. Carthorne, 878 F.3d 458 (4th Cir. 2017). Counsels' premature release and decision not to call Benton as a witness was clearly influenced by a fundamental misunderstanding of the law that prevented a proper evaluation of the value of Benton's testimony. Applicant has met the first prong of Stickland.

Where the only evidence as to who struck the victim with the bottle was based on the statement of Applicant's former cell mate, who was not present in the hotel room, the testimony of Benton as to McElveen's confession would have likely altered the outcome of the case. An attorney's misunderstanding of the law, resulting in the omission of his client's only defense, is not a strategic decision and amounts to ineffective assistance of counsel. United States v. Span, 75 F.3d 1383, 1389-90 (9th Cir. 1996). Counsel's error was prejudicial to the Applicant under the second prong of Strickland. The Court therefore finds that the Applicant is entitled to a new trial.

5. FAILURE OF COUNSEL TO MAKE ADDITIONAL INQUIRIES DURING *BATSON* MOTION.

During jury selection the state struck a black juror. The Applicant moved for a *Batson* hearing. During the *Batson* hearing the solicitor explained that she struck the juror based on a belief that the juror may have had a disqualifying conviction. While the juror had apparently disputed having any disqualifying convictions during jury selection, the facts stated by the

solicitor during the *Batson* hearing were sufficient to prove that the Solicitor nevertheless had a legitimate concern over the juror's potential criminal history. Regardless of whether the juror actually had a disqualifying prior conviction, the solicitor's strike was made in good faith and was race neutral. The record fails to show how further inquiry would have altered the outcome of the *Batson* hearing. The Court therefore finds no error in counsels' lack of further inquiry during the *Batson* hearing.

6. FAILURE OF COUNSEL TO ADVISE ON ACCOMPLICE LIABILITY

Applicant alleged that counsel's failure to inform him of the potential for a conviction based on accomplice liability prevented him from making an intelligent and informed decision as to plea offers. Applicant testified that had he been timely advised that he could be convicted under the theory of accomplice liability he would have accepted one of the state's plea offers. While the record supports Applicant's claim that he was never advised as to the law of accomplice liability, the Court finds no error on the part of counsel.

Trial counsel testified there was never any indication from the state that it would rely on a theory of accomplice liability in the Applicant's case. At trial the state made no effort to prove its case on the basis of accomplice liability. While the state did request a *hand of one* charge, it did so only in response to the defense's attempt to show third party guilt. Even though charged, the state did not argue accomplice liability to the jury. Counsel's decision not to go over the law of accomplice liability prior to the Applicant's decision to reject the plea offers was based on an accurate assessment of the facts, as well as the State's theory of the case. Counsel's decision falls within reasonable and valid strategy given everything known and reasonably predictable at that time. The court therefore finds no deficiency under the first prong of the *Strickland* analysis.

The court further finds that even had counsel prior to the plea offers advised the Applicant on the theory of accomplice liability it would not have altered the Applicant's decision to go to trial. Applicant testified: "If I would have known that I could be found guilty even if I didn't commit the crime." Had counsel explained accomplice liability prior to the plea offers they not only would have had to advise the Applicant of the state's lack of intent to rely on accomplice liability, but the lack of evidence to support it as well. Given that the applicant has been consistent in his claim of innocence and desire for a trial, I find that his simply having knowledge of the law on accomplice liability would not have altered his decision to go to trial. The court therefore finds no prejudice under the second prong of Strickland.

Wherefore, based on the foregoing, it is Ordered that the Applicant's conviction is hereby reversed and a new trial granted. As to any and all other grounds not raised, or those raised and not specifically ruled on, those grounds are denied.

SO ORDERED.

J. Mark Hayes, II, Circuit Judge

This 25th day of April, 2025

Spartanburg, South Carolina.

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
Division of Appellate Defense
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September 17, 2025

Mr. Lawton Leroy Holloway, 379523
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your Case

Dear Mr. Holloway:

On February 5, 2024, I filed a Johnson, or no merit, Petition for Writ of Certiorari on your behalf raising the issue of your trial counsel's ineffectiveness in failing to argue trespassing and the defense of habitation in connection with your immunity claim under the Protection of Persons and Property Act. On July 17, 2025, the Court issued an Order requiring the filing of a merit petition on that same issue **only**. Enclosed is the merit Petition for Writ of Certiorari that I have filed today with the South Carolina Court of Appeals on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Wanda H. Carter
Interim Chief Appellate Defender

WHC/sl

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in dismissing petitioner's ineffective assistance of counsel claim in which petitioner alleged his counsel erroneously failed to argue trespassing and the defense of habitation as grounds for immunity pursuant to the Protection of Persons and Property Act.

STATEMENT

Petitioner Lawton Leroy Holloway was found guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime per jury trial held during the March 2019 term of the Spartanburg County General Sessions Court before Judge R. Keith Kelly, and was sentenced to imprisonment for an aggregate twenty-year prison term. App. 1-533. Attorneys James Price, IV, and James Price, III, represented petitioner at trial, and Deputy Solicitor Derrick Bulsa appeared on behalf of the state.

Petitioner appealed his convictions and sentences. Appellate Defender Taylor D. Gilliam represented petitioner on direct appeal. After briefs were filed, the case was affirmed on appeal. State v. Holloway, 2021-UP-406 (S.C. Ct. App. Filed Nov. 17, 2021).App. 535-589.

On November 4, 2022, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 590-602. The respondent filed a Return dated January 11, 2023. App. 603-614. A PCR hearing in the case was convened on June 20, 2023, at the Spartanburg County Courthouse before Judge Frank R. Addy. App. 616-678. Petitioner was present at the hearing and represented by Attorney Rodney W. Richey, and Assistant Attorney General Joshua Edwards appeared on behalf of the state.

On August 18, 2023, Judge Addy issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 689-696. Petitioner appealed Judge Addy's Order of Dismissal and on February 5, 2024, a Johnson, or no-merit, Petition for Writ of Certiorari was filed in the case. On July 17, 2025, this Court issued an Order requiring that a merit petition be filed in this case. This Petition for Writ of Certiorari follows.

ARGUMENT

The PCR judge erred in dismissing petitioner's ineffective assistance of counsel claim in which petitioner alleged his counsel erroneously failed to argue trespassing and the defense of habitation as grounds for immunity pursuant to the Protection of Persons and Property Act.

Petitioner was tried by jury and found guilty on the offenses of murder and possession of a weapon during the commission of a violent crime charged against him. A pre-trial hearing was held on petitioner's claim of immunity from prosecution under the Protection of Persons and Property Act. See S.C. Code Ann. §16-11-440 (2015). Petitioner testified that on the night in question, Jeremy Bell was visiting at his home when an argument erupted between them. Petitioner explained that he made Bell exit his home thereafter, but later realized that Bell re-entered his home minutes later without his permission. Petitioner stated that after he found Bell back inside of his home, Bell threatened to rape his (petitioner's) partner and daughter, and then Bell approached and threatened to kill him. Petitioner stated that he stabbed Bell in self-defense. App. 68, l. 23 – p. 95, l. 23. Hence, the basis for petitioner's Castle Doctrine defense. After the Castle Doctrine pre-trial hearing was held in the case, the trial judge denied petitioner's request for immunity from prosecution. App, 147, l.3 - p. 152, l.15.

On direct appeal, appellate counsel argued that the trespassing and habitation defense issues were connected to the Castle Doctrine claim presented in the case. Appellate counsel argued that petitioner reacted in self-defense since Bell was in petitioner's home unlawfully as a trespasser. Appellate counsel's argument follows:

> Also, under the "another applicable provision of law" language of S.C. Code Ann. §16-11-450(A), Appellant was entitled to the defense of habitation. The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d

321, 323 (2007). "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." Rye, 375 S.C. at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Id. Rather, the defense of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. "The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was 'defending himself from imminent attack on his own premises.' " State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25). Although self-defense and habitation are analogous, the defenses are not identical. Rye, 375 S.C. at 124, 651 S.E.2d at 323.

When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion. State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936).

A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.

State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923). In State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), this Court held the defendant was entitled to a jury instruction on the defense of habitation. App. 552-553.

Note that the trial judge issued a jury instruction on the defense of habitation. App. 516, lines 1-12.

The South Carolina Court of Appeals ruled on this on direct appeal as follows:

> To the extent [petitioner] argue[s], the trial court erred in failing to grant immunity based on the defense of habitation…we find [the argument is] not preserved for review because…[it was] not raised to and ruled upon by the trial court. App. 588.

On appeal, appellate counsel correctly argued trespassing and the defense of habitation in connection with the immunity claim, but because trial counsel erred in failing to preserve the trespassing and habitation defense matters, the appellate court was prohibited from reviewing the merits of the same on direct appeal. Had trial counsel raised these issues at trial, then the matters would have been preserved for appellate review and the appellate court could have ruled on the same.

During the PCR hearing held in the case, petitioner testified that Bell was a trespasser and not lawfully inside his (petitioner's) home, but that his trial lawyers failed to raise the trespassing and habitation defense issues during the pre-trial immunity hearing. App. 627, l. 12, l.25 - p. 632, l.25; App. 636 , l.11 - p. 637, l.7.

Note that the defense of habitation was presented in trial counsel's written pre-trial immunity motion, but neither that defense (habitation) nor the trespassing issue ended up as matters presented during the pre-trial hearing. See trial counsel's immunity argument at App. 137, l. – p. 138, l.1 and App. 144, l.19 - p. 145, l.13.

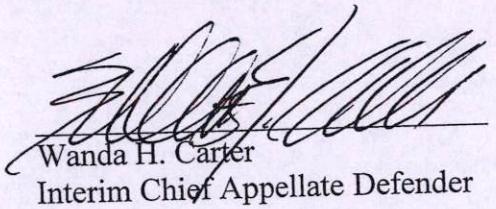
Trial counsel testified at the PCR hearing and stated that the trespassing issue was considered in the case. App. 666 lines 8-23. However, trial counsel failed to develop the trespassing and habitation defense issues at the pre-trial hearing.

Trial counsel erred in failing to present the trespassing and habitation defense issues as part of the immunity from prosecution claim advanced at the pre-trial Castle Doctrine hearing held in the case, which in turn precluded a review of these matters on direct appeal. As a rule, a

contemporaneous objection is required to properly present errors for appellate review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). Trial counsel's omission in this regard constituted ineffective legal assistance in violation of the Sixth Amendment and Strickland v. Washington,466 U.S. 668 (1984), such that but for the error, a reasonable probability exists that the outcome of petitioner's trial and/or direct appeal would likely have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this petition be granted in order to allow full briefing on the above-raised issue.



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372

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 in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Lawton Leroy Holloway, #379523, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of September, 2025.

Wanda H. Carter
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