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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
William H. Seals, Jr., Circuit Court Judge

Circuit Court Case No. 2017-CP-26-02564
Appellate Case No.: 2025-001691

Marcus Dwain Wright, 289646, ... Petitioner,

v.

State of South Carolina,. . . . . Respondent.

REPLY OF PETITIONER

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December 11, 2025.

REPLY

Question Presented

1. If this Court finds that the complete denial of the Petitioner's right to testify was the type of constitutional error that is subject to a harmless error analysis, would the Petitioner's testimony have been detrimental to his case?

The State's harmless error argument that the Petitioner's self-defense testimony would have jeopardized his credibility and the credibility of the defense "pursued up to that point" is unsupported by the record. While the State sets forth in detail what the Petitioner would have testified to had he been allowed, it fails to explain how that testimony would have conflicted with anything that had been presented to the jury by the defense up to that point in the trial. The State's argument erroneously assumes that self-defense was not a theory of defense in the case. At the Post-conviction relief hearing Counsel did not deny that self-defense was a defense in the case, only that it was not the prime theory of defense. App. 191, l. 23-24. While Counsel chose not to comment on the facts or inform the jury of any particular theory of defense, through the cross-examination of Veronica Chandler Counsel focused heavily on proving that the deceased was drawing a gun at the time he was shot:

Q. What started the shooting, you said somebody pulled up their shirt.

A. Yeah all I know, like I said with the words that came, and I'm going by what I , I mean I'm quite sure I saw when the dude in the kitchen said something. I'm not quite sure what it was, jj said yeah, yeah, yeah, I saw when the shirt came up and that's when I heard the pow, pow, pow.

Q. Did you see anything when he pulled his shirt up

A. I'm quite convinced I saw a gun, but I don't know.

Q. Describe it for me

A. I didn't get to look at it like that, I mean everything happened so quick, when he lift up his shirt I'm convinced in my head that I saw a gun.

Q. What color was it was it black, red, orange what color was it I mean. I mean if you saw something you should be able to describe it right

A. But I mean I didn't look at it like that, when he lift up his shirt I mean look like when you pull I mean that's what I'm saying it looked like he had a gun cause he lift up his shirt like like he was reaching for it yeah like he was reaching so I'm quite convinced it was a gun I mean and that's when and when he did that I remember jj turning around and that's when I heard pow, pow, pow, pow I mean and its like I saw like sparks flying and I felt things but I didn't even know jj was on the floor like I said so when I got to the back door and looked in the livingroom that's when I saw the body on the floor and you could of see all the blood from, if ya'll go there now from the point of view that I saw you could of see the blood .

App. 369-370; 811-812.

While repeatedly saying that she did not recall telling the police that she was sure she saw a gun, Chandler did not deny her prior statement to the police:

Q. All right, but you don't recall saying that. You do recall saying that you thought he had a gun, as we talked about earlier, but you're not sure?

A. I mean, like I say, I don't recall saying that, so I'm not going to answer to that. If they got it in the paper, then I evidently say it, but I don't recall saying it.

App. 811, l. 20-25.

If the sole theory of the case was that Petitioner did not shoot the deceased, whether or not the deceased was drawing a gun at the time he was shot would be irrelevant to the defense. If on the other hand self-defense was a theory of the defense, whether or not the deceased had a gun would not only be relevant, but essential to the defense. Counsel clearly made great efforts to establish a fact that served no other purpose than to support a theory of self-defense. As a result, the Petitioner's self-defense testimony would not have jeopardized the credibility of the defense. Nor would the Petitioner's testimony have jeopardized his own credibility as there was evidence in record that the Petitioner had claimed self-defense shortly after the shooting. On direct-examination the State's witness Lanard Powell testified that after the shooting the

Petitioner told him that the deceased was “going for a gun.” App. 876, l. 25-877, l. 15. Petitioner’s self-defense testimony would therefore have been consistent with his statement to Powell made shortly after the shooting, which the jury had already heard in the State’s case. App. 258-260; 271. As a result, the Petitioner’s testimony would not have been detrimental to his case, damaged his credibility, or the credibility of any defense presented up to that point as the State argues. The PCR court therefore erred in finding that the denial of the Petitioner’s right to testify was harmless error. "[T]he right of an accused to testify in his defense is fundamental to the trial process and transcends a mere evidentiary ruling. An accused's right to testify "is either respected or denied; its deprivation cannot be harmless." McKaskle, 465 U.S. at 177 n.8. As such, the error is structural in that it is "'so basic to a fair trial that [its] infraction can never be treated as harmless error.'" Fulminante, 499 U.S. at 289 (*quoting* Chapman, 386 U.S. at 23)."

Conclusion

Based on the foregoing this Court should reverse the decision of the lower courts and grant the Petitioner a new trial.

Respectfully submitted,

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