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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Roger M. Young, Circuit Court Judge

DANIEL LEE FLUDD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000375

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred by finding that because the jury found petitioner guilty of voluntary manslaughter rather than murder, petitioner was not prejudiced by defense counsel's failure to object to the improper jury instruction that malice could be inferred from the use of a deadly weapon when the trial court failed to instruct the jury that malice was not an element of voluntary manslaughter?

STATEMENT

Procedural history

Petitioner was indicted at the August 17, 2017, term of the Hampton County grand jury for the offense of the murder of Bobby Atkins (decedent) on March 22, 2017. App. 643-44. Petitioner was also indicted for possession of a weapon during the commission of a violent crime in that same incident. App. 645-646.

Petitioner's case was called to trial on December 3, 2018, before the Honorable Perry M. Buckner and a jury. App. 1. Ian Deysach represented petitioner, and Tameaka Legette was the assistant solicitor. App. 1.

On December 5, 2018, the jury found petitioner guilty of the lesser-included offense of voluntary manslaughter and guilty of possession of a weapon during the commission of a violent crime. App. 552, l. 16 – 553, l. 3. Judge Buckner sentenced petitioner to twenty years' imprisonment for voluntary manslaughter, and he imposed a five-year concurrent term of imprisonment for possession of a weapon during the commission of a violent crime. App. 565, l. 17 – 566, l. 5,

Petitioner's convictions were affirmed on direct appeal in *State v. Daniel Lee Fludd*, 2021-UP-165 (filed May 12, 2021). App. 568-569. The Court of Appeals found that the issue of the judge's error in charging that malice could be inferred from the use of a deadly weapon was not preserved for appellate review. App. 569.

Thereafter, petitioner filed an application for post-conviction relief (PCR) on May 20, 2022. App. 570-576. The state then filed a return to this application for post-conviction relief and a motion for a more definite statement. App. 578-589. On November 10, 2023, through PCR counsel Chelsey Marto, petitioner filed an amended application. App. 590-593.

An evidentiary hearing was convened on November 27, 2023, before the Honorable Roger Young. App. 596. Chelsey Marto represented petitioner. App. 596. Danielle Dixon was the assistant attorney general. App. 596.

An order of dismissal was filed on February 26, 2024. App. 627-641. As to the failure of trial counsel to object to the jury instruction that malice can be inferred from the use of a deadly weapon, the PCR court found that while the jury instruction was improper, petitioner could not prove prejudice. App. 639. The PCR judge reasoned that since the jury convicted of voluntary manslaughter rather than murder, the jury determined the state did not prove malice aforethought. App. 639.

On April 22, 2025, pursuant to Rule 243(1), SCACR, the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On October 23, 2025, the South Carolina Court of Appeals granted the petition for writ of certiorari.

This brief follows.

STANDARD OF REVIEW

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

ARGUMENT

The PCR court erred by finding that because the jury found petitioner guilty of voluntary manslaughter rather than murder, petitioner was not prejudiced by defense counsel's failure to object to the improper jury instruction that malice could be inferred from the use of a deadly weapon when the trial court failed to instruct the jury that malice was not an element of voluntary manslaughter.

Relevant facts

Decedent and petitioner had their fatal fight because the decedent refused to give petitioner his necklace back after petitioner let him borrow it. During petitioner's trial, Zaneh Garvin testified she was twenty-four years old and was a graduate of Estill High School. App. 286, ll. 4-9. She knew the decedent by his nickname "Champ." App. 286, ll. 2-22. Garvin dated Champ for about four months. App. 287, ll. 2-3. Champ was addicted to drugs. App. 287, ll. 17-19. Garvin admitted she was a prostitute since she sold herself for drugs, and she gave some of her prostitution money to Champ so he could buy drugs. App. 287, ll. 10-16.

Garvin testified that on the night of the fatal incident, she and Champ started out at Anthony Green's house, who the parties knew as "Bummy." App. 267, ll. 17-18; 291, ll. 6-13. Petitioner was there. App. 291, ll. 14-20; 344, ll. 8-10. Drinking and drug use were prominent at the event. App. 344, l. 22 – 345, l. 14. Decedent was using crack cocaine, and Garvin was there to sell herself as a prostitute. App. 345, ll. 8-9. Garvin testified that she did not make any money to give to the decedent that night at Bummy's house. App. 344, l. 4 – 345, l. 22.

However, Garvin acknowledged that at one point, petitioner gave the decedent his necklace, which the decedent put around his neck. App. 346, l. 1 -347, l. 2.

Garvin remembered that they then walked to the home of Deriviere Brooks, also known as "Rivy," but petitioner did not go with them. App. 278, ll. 3-5; 292, ll. 24-25; 347, ll. 3-13. They then proceeded to the home of Travis Fields who was a drug dealer. App. 349, ll. 1-5. According to Garvin, the decedent was trying to trade petitioner's necklace for drugs. App. 348, l. 20 – 349, l. 23.

Garvin testified that at some point that evening, petitioner asked for his necklace back, and the decedent refused to give it back. App. 351, ll. 1-9. A fight ultimately developed over the necklace in which the decedent grabbed a shovel, and he swung the shovel at petitioner. App. 317, l. 24 – 318, l. 1; 319, ll. 2-6; 354, ll. 9-13. The shovel broke. App. 354, ll. 14-15. Garvin admitted no knife was involved until after the shovel was broken. App. 354, ll. 2-18. Garvin claimed after the decedent swung the shovel and broke it that petitioner pulled out a knife and fatally stabbed the decedent. App. 360, ll. 12-21.

A forensic pathologist later testified that the decedent's injuries were likely caused by "a knife with one blunt edge and one sharp edge." App. 458, ll. 11-12. Her opinion was that it was unlikely that a shovel caused the decedent's wounds. App. 458, l. 6 – 459, l. 16. The pathologist's opinion was not in agreement with petitioner's statement to the police that he stabbed the decedent in self-defense with the remains of the broken shovel. *See* State's Exhibit No. 101; App. 647-699, items 132-471.

Thereafter, the trial court instructed the jury on the offenses of murder, voluntary manslaughter, and the defense of self-defense. App. 526, l. 8 – 536, l. 18.

The trial court also charged that "Malice may also be inferred, or may arise, when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or serious bodily harm. Whether an instrument has been used as a

deadly weapon depends on the facts and circumstances of each case, based on the evidence." App. 533, l. 24 – 534, l. 4.

As will be seen *infra*, the state conceded at PCR that the implied malice instruction involving the use of a deadly weapon was improper in this case since it was self-defense case. *See State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).[1] App. 625, ll. 16-20. Further, while petitioner's case was pending on appeal, our Supreme Court held in *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), that regardless of the evidence presented at trial, the trial court should never instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon. Thus, if the inferred malice jury instruction error was preserved on direct appeal, petitioner would have obtained a new trial unless the appellate court found the error harmless.

As stated, appellate counsel raised the improper inferred malice instruction from the use of a deadly weapon on direct appeal. The Court of Appeals found the issue was not preserved for appellate review because defense counsel did not object to the instruction, despite the state asking the court to recharge the jury based on *Belcher*. App. 568-569; App. 543, ll. 20-25.

This failure to object to the implied malice instruction issue was raised in post-conviction relief in the lower court, and it is now properly before this Court. App. 572, 592; App. 606, l. 3 – 607, l. 7; App. 639. Petitioner testified at PCR that he understood the jury instruction that malice could be inferred from the use of a deadly weapon was an incorrect instruction on the law at the time since he had raised self-defense at trial. App. 606, l. 3 – 607, l. 7. Petitioner further testified that appellate counsel raised that issue, and the Court of Appeals found it was not

[1] The state acknowledged in its return that the inferred malice charge was improper under the law that existed at the time of petitioner's trial under *Belcher*. (Return to Petition for Writ of Certiorari at 6 & n.1)

preserved for appellate review. App. 606, l. 16 – 607, l. 3. Petitioner testified that his attorney should have objected to this instruction. App. 607, ll. 6-7.

Trial counsel testified at the PCR hearing that he did not recall the judge charging that malice could be inferred from the use of a deadly weapon. App. 618, ll. 14-17. However, trial counsel admitted that since that jury instruction was given, he should have objected to it. App. 618, ll. 18-21. Nonetheless, trial counsel rationalized the failure to object because "the jury didn't find malice, so it wasn't like they got that instruction and then they found that there was malice. So I guess even though that instruction was given and it wasn't right, it didn't end up being, I don't know, something that the jury decided." App. 618, l. 18 – 619, l. 1.

At the conclusion of the PCR hearing, PCR counsel argued that *Belcher* clearly applied in this case and that defense counsel had no reason not to object to this impermissible jury instruction. App. 622, l. 20 – 623, l. 9.

The assistant attorney general then argued that there was no prejudice from the failure to object to the malice being inferred from the use of a deadly weapon instruction because petitioner was found not guilty of murder. App. 625, ll. 13-20. The state reasoned that the jury did not find malice in this case because it convicted petitioner of voluntary manslaughter rather than murder. App. 625, ll. 13-20.

In the order of dismissal, the PCR judge wrote that the jury instruction on malice being inferred from the use of a deadly weapon was not a proper jury charge. App. 639. The PCR court also ruled:

> However, this Court finds Applicant cannot prove prejudice from counsel's failure to object to this charge. The jury convicted Applicant of voluntary manslaughter, which does not include malice aforethought. Thus, the jury found the State did not prove malice aforethought beyond a reasonable doubt. Because the jury—in convicting Applicant of voluntary manslaughter but

> acquitting him of murder—determined the State did not prove malice aforethought, it is not reasonably likely the outcome would have been different had the Court not given this inferred malice charge. Thus, Applicant did not prove prejudice, and this claim is denied.

App. 639. Thus, the PCR court denied petitioner's claim based on its finding that petitioner failed to prove prejudice. App. 639.

Discussion

The PCR court erred by refusing to find trial counsel infective for failing to object to the trial court's erroneous inferred malice jury charge. The parties and the PCR court agree that trial counsel's performance was deficient for failing to object to the improper instruction. However, the PCR court erred by finding that petitioner was not prejudiced by trial counsel's deficient performance and denying relief on petitioner's claim.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. *Strickland*, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694,

104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Moreover, in *Belcher*, which was the controlling law at the time of petitioner's 2018 trial, our Supreme Court held instructing the jury that malice could be inferred from the use of a deadly weapon was improper in a murder case where there was any evidence that would reduce, mitigate, or justify the killing. 385 S.C. at 597, 611, 685 S.E.2d at 802, 809. Further, the *Belcher* Court agreed that because the evidence presented a jury question on self-defense, it was an error to charge that the jury could infer malice from the use of a deadly weapon. *Id.* at 601, 685 S.E.2d at 804. Following petitioner's 2018 trial, our Supreme Court held in *Burdette* that "regardless of the evidence presented 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." 427 S.C. at 503-05, 832 S.E.2d at 582-83.[2]

In petitioner's case, the jury was instructed both on the complete defense of self-defense, which the state had the burden of disproving beyond a reasonable doubt once it was properly raised by petitioner, *see State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020) (holding that an implied malice charge should not be given if there has been evidence presented that the defendant acted in self-defense), and on the lesser-included offense of voluntary manslaughter, *see State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001) (voluntary manslaughter instruction was mandated where there was evidence the killing occurred in a heat of passion upon a sufficient legal provocation). There is no question that the trial court's instruction that "malice may also be inferred, or may arise, when the deed is done with a deadly weapon" was an

[2] Although *Burdette* was decided after petitioner's 2018 trial, the PCR court cited *Burdette* in its order of dismissal. App. 639. In addition, *Burdette* was decided during the pendency of petitioner's appeal and presented circumstances identical to petitioner's case, as discussed *infra*.

improper jury instruction. App. 533, ll. 24-25; App. 618, ll. 20-21 (trial counsel testifying during petitioner's evidentiary hearing that he "definitely should have" objected to the inferred malice charge); App. 639 (PCR court finding that the inferred malice charge was improper because evidence of mitigation to voluntary manslaughter and self-defense were presented). In fact, the charge given during petitioner's trial was the precise jury charge that our Supreme Court mandated should not be instructed. *Burdette*, 427 S.C. at 503-05, 832 S.E.2d at 582-83. Therefore, trial counsel's performance was undoubtedly deficient. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117. Crucially, the PCR court erred by finding that petitioner was not prejudiced by the improper implied malice instruction because the jury found petitioner guilty of voluntary manslaughter and acquitted petitioner of murder. App. 639.[3]

Petitioner was prejudiced by the improper jury instruction because the jury was not instructed that malice was not an element of voluntary manslaughter. Thus, there is a reasonable probability that, but for trial counsel's failure to object to the improper inferred malice instruction, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694.

When considering whether an incorrect jury instruction constitutes harmless error, this

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[3] The state's preservation argument concerning the trial court's lack of a charge that voluntary manslaughter is a killing without malice is without merit. (Return to Petition for Writ of Certiorari at 7-8). During petitioner's evidentiary hearing, PCR counsel specifically argued to the PCR court that the briefs and the Court of Appeals decision in petitioner's direct appeal were before the PCR court. App. 622, ll. 20-22. Therein, appellate counsel argued that petitioner's case was identical to *Burdette* and that the trial court failed to instruct the jury that voluntary manslaughter was a "killing without malice." App. 568-569. Importantly, the PCR court expressly ruled that petitioner could not prove prejudice because he was convicted of voluntary manslaughter "which does not include malice aforethought." App. 639. The record belies any argument that the issue was not raised to the PCR court given that the PCR court's ruling contemplated the voluntary manslaughter charge in petitioner's case. *See Washington v. State*, 440 S.C. 550, 564, 891 S.E.2d 668, 675 (Ct. App. 2023) (explaining that "[A]n issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a PCR claim challenging ineffective assistance of counsel."); *see also Bailey v. State*, 392 S.C. 422, 431-33, 709 S.E.2d 671, 676-77 (2011) (determining that Bailey's argument was properly preserved because it was raised and ruled upon by the PCR judge.).

Court is required to review the trial court's charge in its entirety. *Burdette*, 427 S.C. at 498, 832 S.E.2d at 580. In light of the entirety of the trial court's jury instructions, it cannot be said that the inferred malice instruction was harmless. Particularly, the trial court never instructed the jury that voluntary manslaughter is a killing that is committed "without malice." *See* S.C. Code Ann. § 16-3-50 ("A person convicted of manslaughter, or the unlawful killing of another *without malice* . . .) (emphasis added); App. 534, l. 14 – 535, l. 15; 548, l. 4 – 549, l. 23. Despite the state's contention that the voluntary manslaughter charge was proper under the law, the voluntary manslaughter statute and our caselaw support that voluntary manslaughter is properly defined as a killing *without malice*. (Return to Petition for Writ of Certiorari at 9); S.C. Code Ann. § 16-3-50; *see State v. Gaskins*, 284 S.C. 105, 326 S.E.2d 132 (1985), *overruled in part on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (explaining that "While malice is a necessary ingredient of murder . . . [i]f the unlawful killing is without malice, the offense is reduced to manslaughter under § 16-3-50."); *see also Wiles v. Roof*, 854 F.2d 671 (4th Cir. 1988) (explaining that voluntary manslaughter does not include malice as an essential element); *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394 (defining manslaughter as "the unlawful killing of another without malice.") (*citing* § 16-3-50)).

Instead, the jury was instructed that to be guilty of murder, "the state must prove beyond a reasonable doubt that defendant killed another person with malice aforethought." App. 532, l. 22 – 533, l. 23. The jury was also instructed that malice could be inferred "when the deed is done with a deadly weapon." App. 533, ll. 24-25. Both the broken shovel handle and a knife were deadly weapons within the meaning of this jury instruction. App. 533, l. 24 – 534, l. 4. *See State v. Bennett*, 328 S.C. 251, 493 S.E.2d 845 (1997) (Whether a fist can be a deadly weapon was a question of fact for the jury).

Importantly, the lack of malice was never mentioned in the court's instruction on voluntary manslaughter. App. 534, l. 14 – 536, l. 2. The absence of such an instruction means that the jury could have convicted petitioner of voluntary manslaughter by reasoning that the killing included malice but precluded it from acquitting petitioner by reason of self-defense since a defendant had to be without fault in bringing on the difficulty. App. 526, l. 8 – 529, l. 14. If petitioner was acting with malice aforethought, it would be reasonable for the jury to conclude that malice aforethought was a mental state that precluded it from acquitting petitioner by reason of self-defense. And the jury's rejection of self-defense could have been based on an erroneous determination that malice was involved since a deadly weapon was used by petitioner. The jury's acquittal of petitioner for the charge of murder does not correct the trial court's erroneous charge that malice could be inferred from the use of a deadly weapon or the court's failure to specify that the lesser-included offense of voluntary manslaughter *did not* require the jury to find petitioner acted with malice aforethought. *See e.g., State v. Gandy*, 283 S.C. 571, 324 S.E.2d 65 (1984), *implicitly overruled in part by Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991) (explaining that voluntary and involuntary manslaughter are distinguished from the offense of murder because the vital element of malice is missing).

Given that the jury could have convicted petitioner of voluntary manslaughter on its incorrect belief or impression that malice was an element of voluntary manslaughter, and thus, the killing included malice, it cannot be said that the improper instruction did not contribute to the verdict. *State v. Perry*, 440 S.C. 396, 408, 892 S.E.2d 273, 279 (2023) (citing *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578) ("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."). Even further, as in *Burdette*, the trial court in

petitioner's case twice instructed the jury on voluntary manslaughter but failed to include that it is a killing without malice. App. 534, l. 14 – 535, l. 15; 548, l. 4 – 549, l. 23; *Burdette*, 427 S.C. at 501, 832 S.E.2d at 581. The *Burdette* Court determined that the lack of instruction that malice is not an element of voluntary manslaughter left the jury with "the incorrect impression that malice is an element of voluntary manslaughter, which allowed the jury to use the improperly charged inference of malice from use of a deadly weapon to find Burdette guilty of voluntary manslaughter." *Burdette*, 427 S.C. at 501, 832 S.E.2d at 581. The prejudice that stemmed from the improper charge was again compounded when the jury requested the court to "explain voluntary manslaughter," and the trial court repeated its voluntary manslaughter charge absent an instruction that malice was not an element of voluntary manslaughter. *See id.*; App. 547, l. 3 – 549, l. 23. The result was erroneous and confusing jury instructions that greatly prejudiced petitioner and contributed to the verdict. *Burdette*, 427 S.C. at 501, 832 S.E.2d at 581.

Accordingly, the PCR court erred by refusing to find trial counsel ineffective for failing to object to improper jury instruction that malice could be inferred from the use of a deadly weapon given in petitioner's case, and by concluding petitioner did not suffer prejudice from the improper jury instruction since petitioner's jury was not instructed that voluntary manslaughter was the killing of another human being *without malice*.

CONCLUSION

Based on the foregoing argument, the PCR court's denial of relief should be reversed, and petitioner's case remanded to the Hampton County Court of General Sessions for a new trial.

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ATTORNEY FOR PETITIONER

This 16th day of December, 2025.

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RESPONDENT

APPELLATE CASE NO. 2024-000375

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Danielle E. Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 16th day of December 2025.

Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Tuesday, December 16, 2025 1:41 PM
To: Danielle Dixon
Cc: Keegan, Molly; Vickie Hall
Subject: 2024-000375 Daniel Lee Fludd v. The State
Attachments: 2024-000375 Daniel Lee Fludd v. The State Brief of Petitioner.pdf

Good Afternoon,

Attached for service in the above-referenced case is the Brief of Petitioner which will be filed today, December 16, 2025, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
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