

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2012-213670

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NOV 22 2013

S.C. Supreme Court

RAPHAEL BRIGGS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO REMAND FOR MOTION PURSUANT TO RULE 60, SCRPC AND
REQUEST TO HOLD IN ABEYANCE**

Respondent herein moves for remand of the matter for a Motion Pursuant to Rule 60, SCRPC. This motion is based on an error in the PCR court's order.

I.

Undersigned counsel was present at the PCR hearing on October 27, 2010. The transcript of the PCR hearing reflects that Petitioner complained of Counsel's failure to reflect a jury charge on voluntary manslaughter. (App. p. 301, line 22 – p. 302, line 7.) According to memory of the case and handwritten notes taken by the undersigned at the hearing, Petitioner actually complained of Counsel's failure to request a charge on involuntary manslaughter. (Attachment A – p. 2, line 3 of handwritten notes) Following the hearing, the case remained under advisement,

and undersigned recalls researching the issue of involuntary manslaughter and tasking another attorney or clerk to assist in this as well. However, undersigned was deployed with the military when the proposed order in this matter was ultimately prepared. It appears that the hearing transcript was ordered by the Attorney General's Office and relied upon in preparing the proposed order which contains a subheading regarding voluntary manslaughter. (App. pp. 322-323.) Prior to preparing this Return to Petition for Writ of Certiorari, the undersigned attempted to procure tapes from the hearing to resolve this issue, but tapes have been destroyed. (Attachment B.) The PCR application contains an allegation that Counsel failed to request a charge on involuntary manslaughter. (App. pp. 277-279.) Further, a charge on voluntary manslaughter was in fact given during the trial, so an allegation raising failure in to request the charge seems illogical. (App. p. 218, line 23 – p. 220, line 22.) Based on the foregoing, it is the undersigned's belief that the PCR court transcript is in error in p. 301, line 22 – p. 302, line 7 and should reflect that Petitioner stated "involuntary manslaughter" and not "voluntary manslaughter."

II.

The issue now raised on petition – ineffectiveness of counsel in failing to request a jury charge on involuntary manslaughter - was not ruled upon by the PCR court in the current order. Plyler v. State, 309 S.C. 408, 409, 424 S.E.2d 477, 478 (1992) (issue procedurally barred where not raised to and ruled upon by trial court). See also Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). No motion pursuant to Rule 59(e), SCRPC, was filed on Petitioner's behalf. Without the trial court's ruling on this matter, Petitioner's issue is not preserved for appellate review. However, Petitioner did raise the matter

below.

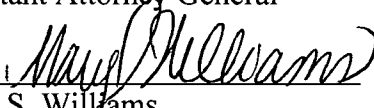
III.

WHEREFORE, having made Motion to Remand for a Motion Pursuant to Rule 60, SCRCF, Respondent would respectfully request this Court to grant the Motion, hold all deadlines in abeyance pending a ruling on this motion, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
Mary S. Williams
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 22, 2013

A

10/27/10

① [redacted] - Scott Robinson,
relieve job

② [redacted] - consent to blanket
annual v. Janet

③ [redacted] - w/d
thorough inquiry

④ [redacted] w/d
thorough inquiry - will be released in 90 days

⑤ [redacted] MTD

⑥ [redacted] wants to w/d.
his max out is 2013, he went thru 3 trials,
if successful he'd face this again

⑦ Raphael Lambert (Burger)

- motion to cont. based on what someone from
it admin to talk @ indict dinner

- trial applicant

- said to him private only

- grand jury process - they indicted me right -
there wasn't BS then

- He opened door. ? ?

- I asked him to subpoena people & he +
I only saw him 1-2x.

- Bad acts: opened doors for duty deal stipend.
- Jail order to golden Rule by solicitor.
- Jail request invol. manslaughter
- Jail to have Chancellor, told Mr. Devoe
- failed to properly submit @ guest/duty to admit
- Imprachment of witness - I told him the guy had charges, he said he could've gotten - ~~Law~~
- Start dup - I recall
- Retreat is chg zzz

TWO HARRY DEVOE

appx Sept 05. Trial Mar. 06.

Polem heavy - he made statement to Catta @ duty deal

No plea negotiations - he told me @ Chancellor slowed down my suing him - memo in file @ fee & paid to Chancellor

Self-defense - the V was approaching, they had a fight @ dup. State made it critical - I see it that way - he left

no? @ gun - V had stick, conflicting instr. Dev had stick earlier -

~~State v Gibson
for the state
in the state~~

Have walked into gun & went off. Guest
was it hunting a self-defense
charge - v.m. duty of retreat

SC - 18 years, 15 years w/ PD work

met him ^{Sept 30} Nov. 5 pretrial 10/11, go to jail
a lot.

Would expect politician to give a case

He wanted to, gave him a sc -

primary - self defense, social guest

(8)

[REDACTED]
- motion to allow counsel - want to subpoena
w/ witnesses. He talked to Scott Robinson.
Jeter says investigator & Robinson say
witness is of no use. Investigator Benny Webb
came to see me - all did was type up our
conversation. He \neq do investigation.

- Brooks is relieved - you can bring yourself
or go MD se

B

Mary Williams

From: Allen, Desiree <[REDACTED]@org>
Sent: Tuesday, October 22, 2013 9:34 AM
To: Mary Williams
Subject: RE: Raphael Briggs

Yes, the tapes are no longer available 30 days after the transcript is delivered. We adhere strictly to Rule 607 when dealing with CR records. To do otherwise, would create a huge storage issue.

From: Mary Williams [mailto:[REDACTED]@gov]
Sent: Tuesday, October 22, 2013 9:24 AM
To: Allen, Desiree
Subject: Raphael Briggs

Ms. Allen,

I don't believe we've spoken since I was a law clerk a few years ago, but I am following up on a question I had in the PCR case of Raphael Briggs taken by Dianne Rutledge on October 27, 2010 (case number 2009-CP-14-0023) . It is my understanding that the tapes of these hearings may be destroyed after they are transcribed. The reason I am following this up is that I believe there may be an error (see attached) and I think it would be dishonest for me to not bring that to the court's attention in my Return to Petition for Certiorari. Can you tell me if the tapes in this case were destroyed? If not, I would like to try to replay just this portion to see whether I mistook what the Applicant said.

Thank you so much for your time, and I am sorry to trouble you with this.

Best regards,

Mary S. Williams
Assistant Attorney General
Post-Conviction Relief and Criminal Appeals
PO Box 11549
Columbia, South Carolina 29211-1549
Telephone: (803) 734 -3737 or (803) 734-3752



ALAN WILSON
ATTORNEY GENERAL

August 19, 2013

Desiree Allen
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201-3739

Re: Raphael Lamont Briggs #314499 v. State of South Carolina
Circuit Court Case No. 2009-CP-14-0023 / Appellate Case No. 2012-213670

Dear Ms. Allen,

I am working on the State's Return to Petition for Writ of Certiorari in the above-referenced matter. I also represented the State at the PCR hearing on October 27, 2010. While I was deployed, this office ordered a copy of the hearing transcript which is now part of the appellate record. The transcript was taken by Dianne Rutledge. On p. 7, line 24 – p. 8, line 5 (copy attached), reference is made to defense counsel's failure to request a jury charge on voluntary manslaughter. I recalled the allegation at the hearing to be that counsel failed to request a charge on involuntary manslaughter, and Briggs' written application also alleges failure to request a charge on involuntary manslaughter, making no mention of voluntary manslaughter.

This issue is now central to the appeal. Are the tapes of this hearing still available? If so, would you be able to review them to ensure that the hearing testimony was indeed voluntary, not involuntary, manslaughter?

I thank you in advance for your time and assistance in this matter.

Best regards,

Mary S. Williams
Assistant Attorney General

Enclosure

1 Q What was that last part?

2 A Deflame evidence.

3 Q Okay. And can you elaborate on that?

4 A He -- he -- he opened the doors because he -- he like
5 -- he's saying that I was drug -- you know, a drug dealer
6 like this. He sell prior -- you know, he sell -- produce.
7 So that opened the door for them.

8 Q So what you're saying is you felt that it prejudiced
9 you by making a reference to drug dealing; is that correct?

10 A Yes, sir.

11 Q Okay. All right. Anything else?

12 A Yes. He -- he -- he -- the trial counsel failed to
13 object to the state going -- going into argument and laying
14 aside challenging the deflame, and prejudice and passion of
15 the jury.

16 Q Okay. You're saying that the solicitor made certain
17 comments that trial counsel did not object to?

18 A Yes, sir.

19 Q Okay. You felt that prejudiced you in the trial, and
20 that was improper; is that correct?

21 A Yes, sir.

22 Q All right. Any other issues in regards to Mr. Devoe's
23 representation?

24 A He failed to request a jury charge of voluntary
25 manslaughter.

MR. BRIGGS - Direct by Mr. Brooks

8

1 Q In this case you were found guilty of murder?

2 A Yes, sir.

3 Q Okay. And you felt that he should have asked for a
4 lesser-included offense of voluntary manslaughter?

5 A Yes, sir.

6 Q All right. And he didn't do that; is that correct?

7 A No, sir.

8 Q Now, wasn't there certain things that came up during
9 the trial in the course of certain conversations you had
10 with Mr. Devoe that you wanted to tell the Judge about?

11 A Yeah. Like, he was like -- the same thing I was
12 telling you about when he was like when he first came in
13 here, I was like, he ain't come see me, and I asked him
14 why. He was like -- the same thing I was saying a few
15 minutes ago. He was like -- I said you ain't need me
16 because you had somebody come see you, you know what I'm
17 saying. So I was like, that ain't got nothing to do with
18 me. I'm in jail, you know what I'm saying.

19 Q How long did you have Mr. Devoe as your attorney
20 before going to trial?

21 A About 5 months; that's all I know. And I seen him
22 maybe one or two time maybe.

23 Q Okay. All right. You had no bond; is that correct?

24 A I never went up for bond or nothing.

25 Q So from the time you were arrested, until the time you

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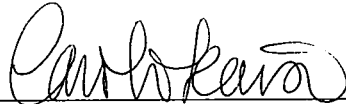
PROOF OF SERVICE

I, Caroline Kaiser, certify that I have served the **Motion to Remand for Motion Pursuant to Rule 60, SCRCP**, on Petitioner by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 22 day of November, 2013.



Caroline Kaiser
Legal Assistant
Office of Attorney General
Post Office Box 11549
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(803) 734-3737