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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Daniel D. Hall, Circuit Court Judge

RAEFORD D. WIDEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002426

PETITION FOR WRIT OF CERTIORARI

W. CHANDLER NORVILLE
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

INDEX

ISSUE PRESENTED

Whether the PCR court erred in finding that trial counsel was not ineffective for failing to interview or to call three favorable defense witnesses?

STATEMENT

Between 3 and 5 a.m. on March 15, 2015, Petition was woken by loud noises outside of his home. App. 44, ll. 16-19. He looked out the front window and saw two unknown men standing in his yard. App. 44, ll. 16-19. Petitioner stepped outside with his firearm and asked the men why they were there; neither responded. App. 45, ll. 1-6. Petitioner walked to the car that was parked in the yard, and he saw his older sister Taquanna Blassingame, unconscious and unresponsive, laid in the back seat of the vehicle. App. 46, ll. 14-16. It would later be discovered that Taquanna's unresponsive state was due to extreme intoxication which would require hospitalization. App. 151, ll. 5-6.[1]

Petitioner attempted to check on his sister; to do this, he repeatedly asked the person sitting in the driver's seat of the vehicle, Ryan Tatum, to turn off the vehicle. App. 47, ll. 15-17. Rather, while Petitioner was half inside the vehicle tending to his sister, Tatum pressed the gas and began driving the vehicle in reverse. App. 47, ll. 17-20. The door struck Petitioner and pulled him alongside the moving car. App. 47, ll. 17-20. Petitioner raised his firearm and shot Tatum three times, killing him. App. 47, ll. 21-23.

Trial

On July 21, 2015, the Anderson County grand jury indicted Petitioner for murder. App. 680-81. The case proceeded to trial from November 13-17, 2017, before the Honorable R. Lawton McIntosh and a jury. Scott David Robinson represented Petitioner; assistant solicitors Stanford Lee Overby, Jr., and Morgan Dawn Page represented the state. App. 1.

[1] A witness at the PCR hearing testified that Taquanna was so out of it that gunshots inside the car did not wake her. App. 559, ll. 23-25.

Before trial, the trial court conducted an immunity hearing pursuant to the Protection of Persons and Property Act.[2] Petitioner testified in the manner outlined above. The state called several witnesses in response.

Petitioner and Taquanna's cousin Brianna Ware testified that she was the other passenger in the car that night seated in the front passenger seat. App. 67, ll. 15-21. She stated that she and Taquanna traveled from Anderson to Greenville that night to go to several clubs. App. 63, ll. 12-14. They met Ryan Tatum, who Ware described as Taquanna's boyfriend,[3] at one of the clubs. App. 62, ll. 20-24. At the end of the night, Tatum drove them back to Anderson to Petitioner's home to pick up Ware's car which she had left parked in Petitioner's yard. App. 65, ll. 21-23. When they arrived, Ware's car was stuck in the mud. App. 66, ll. 15-23. Despite help from Tatum and a passerby who came across the situation, the car remained stuck in the mud, and Ware decided she would come back for it the next day. App.66, ll. 15-23.

At this time, Petitioner came outside. App. 67, ll. 15-21. He inquired about the identity of Tatum and his sister's condition. Ware told him that Tatum was Taquanna's boyfriend and that they were okay. App. 68, ll. 16-23. Tatum put the car in reverse, at which point Ware testified "all [she] heard was gunshots." App. 70, ll. 8-12. Ware admitted that she had consumed four mixed drinks that night. App. 74, ll. 1-15. She did not see the shooting. App. 75, l. 25 – 76, l. 2.

Deputy Coroner Donald McCown testified that the pathologist who performed Tatum's autopsy found three gunshot wounds. App. 92, ll. 5-6. He opined that Petitioner was standing at

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[2] S.C. Code Ann. §§ 16-11-410, *et seq.*

[3] Contradictory information about Taquanna and Tatum's relationship exists. Ware testified at trial that Tatum was Taquanna's "boyfriend" and that she was "excited about meeting up with [him]." App. 263, ll. 8-10. The state used this relationship, among other things, to counter Petitioner's defense of others defense, asserting that Taquanna was never in danger because she had consented to the situation she was currently in with her boyfriend. However, Taquanna later denied that she and Tatum ever dated.

the rear passenger door at the time he began shooting. App. 96, ll. 15-19. This was confirmed by testimony from officer Nathan Mitchell who testified that he used trajectory rods to determine that the shooter was standing at the back passenger side of the car. App. 108, ll. 2-8. McCown further testified that a post-mortem toxicology report performed on Tatum showed that his blood alcohol content was 0.223, which he described as "extremely high" and three times the "legal limit." App. 93, l. 18 – 94, l. 1; 181, ll. 4-5. Officer Robert Gebing testified that he took two statements from Petitioner. His testimony was used to point out inconsistencies between the two statements, namely that Petitioner originally lied about the location of the gun but did subsequently truthfully tell the police the location of the gun. App. 114, ll. 22-25.

The trial court denied immunity, finding that Petitioner had not carried his burden to establish immunity by a preponderance of the evidence. App. 119, ll. 3-7, 12-14. At trial, Petitioner's primary defense was accident, though he did not entirely abandon self-defense or defense of others. *See, e.g.,* App. 141, ll. 4-5 (trial counsel calls the shooting an "accident" in opening statement).

In addition to the testimony presented at the immunity hearing, the state also presented testimony from officer Nathan Mitchell, who had interviewed Petitioner. App. 182. In that interview, Petitioner claimed the shooting was an "accident." App. 192, ll. 6-10. Mitchell described Petitioner as cooperative and very emotional. App. 197, ll. 8-16.

Willie McDonald testified that he was the passerby who attempted to help Ware and Tatum get Ware's car unstuck from the mud. App. 291, ll. 6-9, 19-23. He left the scene after they failed to get the car unstuck. While walking away, he heard the front door "bust open," then he heard gunshots. App. 295, ll. 6-8. He asserted that he was "sure" that Petitioner shot from the *driver's* side of the car. App. 296, ll. 14-19. He testified that he heard Petitioner yell "you gonna

die, mother f**" or "something like that." App. 296, ll. 11-13. McDonald had previously been convicted of assault and battery of a high and aggravated nature, shoplifting, and burglary second degree, and was facing pending charges for failure to stop for blue lights and other minor charges. App. 299, ll. 4-25.

After the state rested, defense counsel moved for directed verdict. He asserted that the evidence showed the shooting was "an accident," and there was no evidence of malice aforethought. App. 305, l. 24 – 306, l. 6. He asserted that involuntary manslaughter may be a proper charge, but not murder. App. 306, ll. 3-5. The trial court denied the motion. App. 306, ll. 10-12. Petitioner did not put up a case in defense. The trial court charged the jury on the defenses of self-defense, defense of others, and accident. App. 373. The trial court also charged the lesser-included offenses of voluntary manslaughter and involuntary manslaughter. App. 373.

The jury found Petitioner guilty of murder. App. 405, ll. 7-9. He was sentenced to thirty (30) years' imprisonment. App. 413. His appeal was dismissed pursuant to *Anders v. California.*[4] *State v. Wideman*, 2020-UP-063 (Mar. 11, 2020). App. 415-16.

Post-Conviction Relief Proceedings

On May 12, 2020, Petitioner filed a timely application for post-conviction relief (PCR), App. 417-459, which he amended through counsel on August 15, 2023. App. 475-77. An evidentiary hearing was held before the Honorable Daniel D. Hall on August 21, 2023. App. 488 Sarah M. Henry represented Petitioner; Donald J. Zelenka represented the state. App. 488.

At the beginning of the hearing, Petitioner withdrew several allegations he made in his *pro se* application. App. 493-94. He proceeded on the two ineffective assistance of counsel allegations in his amended application, which were: (1) trial counsel was ineffective for pursing

[4] 386 U.S. 738 (1967).

"accident" as a primary defense, when the case was a self-defense and defense of others case; and (2) trial counsel was ineffective in failing to call several defense witnesses to support defense of others. App. 475-76. At the evidentiary hearing, Petitioner presented evidence from four (4) witnesses: himself, his mother Rose Wideman, his sister Taquanna Blassingame, and his father Raeford Wideman, Sr. The state called no witnesses because trial counsel was not competent to testify due to incapacity. *Cf. In the Matter of Scott David Robinson*, App. Case No. 2023-000715 (S.C. May 15, 2023) (placing trial counsel on incapacity inactive status and finding trial counsel "unable to…participate in the disciplinary investigation….").

Petitioner testified that trial counsel advised him accident, not self-defense or defense of others, was the best defense to pursue because trial counsel could see Petitioner accidentally discharging the gun "because of…the car door hitting [Petitioner]." App. 517, ll. 18-25. Trial counsel did not discuss with Petitioner how the defenses of accident or self-defense would work together or that they were contradictory. App. 518, ll. 11-22. Trial counsel told him not to testify because Petitioner's recorded statements to police were sufficient. App. 519, ll. 2-7. Petitioner told trial counsel that his parents and sister would testify on his behalf, but to his knowledge, trial counsel never reached out to them. App. 520, ll. 3-12.

Rose Wideman

Rose Wideman testified that trial counsel never asked her what her testimony would be, even though she specifically inquired about being a witness. App. 544, ll. 12-17. Wideman did tell trial counsel what she would say anyway, and trial counsel told her that if she testified, she could be charged with a crime. App. 545, l. 20 – 546, l. 1.[5] Regarding the facts of the case, Rose

[5] In a footnote, the PCR court's order states:

testified that on the night of the shooting, her husband woke her up because something was happening outside their home. App. 546, ll. 14-17. She went outside and saw Petitioner talking to Tatum but could not hear what was said until she reached the car. App. 548, ll. 19-23. She heard Petitioner tell Tatum to turn off the ignition so that he could check on his sister. App. 549, ll. 4-7. Tatum was "in a daze" and not responding. App. 549, ll. 10-12. Rose could see Taquanna in the backseat in a "fetal position," not moving or talking. App. 550, ll. 6-24. Rose was not sure if Taquanna was even alive at this time. App. 554, ll. 11-13.

Rose was concerned because the car was parked next to a deep ditch on the side where Petitioner was standing. App. 552, ll. 1-11. While Petitioner was telling Tatum to turn the car off, Tatum put the car in reverse and started moving out of the driveway with the door still open and Petitioner still half inside. App. 552, l. 24 – 66, l. 7. The moving car was pulling Petitioner along with it. App. 555, ll. 3-10. Rose did not feel that Petitioner had any choice but to shoot Tatum. App. 565, ll. 5-8.

Rose further testified that Brianna Ware was obviously intoxicated that night such that her speech was slurred and her eyes were red. App. 563, ll. 6-16. Rose spoke to Ware the day after the incident, and Ware did not remember speaking to her. App. 568, ll. 5-17. Trial counsel told Rose that none of her testimony would be useful. App. 564, ll. 11-13.

> The Court recognizes that by these admissions about her allegedly false statements to her son's counsel, Rose could have been investigated for making a false statement to law enforcement related to the possibility of accessory after the fact, potentially obstruction of justice due to the prior interaction with the police at the crime scene about a different version of their action or possible perjury related to the potential testimony at trial, if counsel was aware of its falsity.

App. 642, n. 5.

Taquanna Blassingame

Taquanna testified that she had never spoken to trial counsel. App. 585, ll. 17-22. She never told Petitioner about her relationship with Tatum or who Tatum was. App. 591, ll. 8-10. She was extremely intoxicated on the night of the shooting, claiming she was more intoxicated than she ever gets. App. 592, l. 21 – 593, l. 1. She was so intoxicated, in fact, that she believed it is possible she was drugged. *Id.* When she woke up the next day, it was several hours later, and she had no memory of the night before. App. 597, ll. 17-15. She testified that, had she had her wits about her, she would not have consented to an extremely intoxicated Tatum driving her home. App. 598, ll. 21-24.

Raeford Wideman, Sr.

Raeford Wideman, Sr., testified that he had one meeting with trial counsel where trial counsel told him not to testify and did not ask him what happened. App. 603, ll. 20-25. Trial counsel told both him and Rose that they would be "in trouble" if they testified. App. 605, ll. 2-3. As to the facts of the case, Wideman, Sr., testified that as he walked up to the car, Tatum began driving in reverse. App. 605, l. 21 – 606, l. 7. At this time, Petitioner was still in the car. *Id.* There was a large ditch right next to Petitioner. *Id.* Wideman, Sr., told Tatum to stop the car and give him the keys; Tatum did not comply. App. 607, ll. 3-5. Petitioner was caught in the car door and could have been pushed into the ditch. App. 607, ll. 20-25. There were no signs that Tatum planned to stop the car; "he definitely wasn't going to stop." App. 609, ll. 1-2. In the opinion of Wideman Sr., Petitioner had no choice but to shoot Tatum. App. 605, l. 21 – 606, l. 7.

He further testified that he could not tell whether Taquanna was alive or dead, that Taquanna was unresponsive, and that he was concerned Taquanna may die. App. 608, ll. 8-9, 18-

20. Since he did not know who Tatum was, he had no way of knowing where Tatum was taking Taquanna or how to find her. App. 609, ll. 18-20.

Arguments

At the close of evidence, the parties presented oral arguments to the PCR court. Petitioner asserted that the record of his trial demonstrated that trial counsel repeatedly relied on an accident defense rather than self-defense or defense of others. App. 619, l. 10 – 625, l. 6. This had the effect of weakening Petitioner's credibility and the credibility of his defense. App. 622, l. 25. This led to the solicitor being able to easily counter all of the points made by trial counsel. App. 621, l. 2 – 622, l. 1. Further, trial counsel's advice to Petitioner's parents about not testifying was entirely improper. App. 624, ll. 1-3. Counsel for Petitioner stated he was relying on *Edwards v. State,*[6] *Thomas v. State,*[7] and *Glover v. State.*[8] App. 625, ll. 10-15. The state asserted that trial counsel's decisions were all reasonable strategic decisions. App. 625, ll. 10-15. The state asserted that there was no indication that Tatum was intentionally trying to run Petitioner over with the car. App. 626, ll. 7-8.

PCR Court's Order

The PCR court denied relief and dismissed the application with prejudice. App. 632-679. At the outset, the PCR court articulated the legal standard that "every effort must be made to eliminate the distorting effects of hindsight and evaluate counsel's decisions at the time they were made." App. 649 (citation omitted). The PCR court stated that this "is particularly true in this setting where trial counsel was unavailable due to a mental incompetency issue due to a medical condition." App. 650. The PCR court reviewed Petitioner's claims under the lens that it

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[6] 392 S.C. 449, 710 S.E.2d 60 (2011).
[7] 346 S.C. 140, 551 S.E.2d 254 (2001).
[8] 318 S.C. 496, 458 S.E.2d 538 (1995).

could "infer from the record what the strategy was, even if trial counsel cannot or will not subsequently articulate it." App. 663 (*citing, inter alia, Wood v. Allen*, 558 U.S. 290 (2010)).

As to the allegation that trial counsel failed to call Petitioner's witnesses, the PCR court found that trial counsel had not been ineffective. App. 661. According to the PCR court, strategic decisions could be inferred from the record. App. 663. As to Taquanna's testimony, the PCR court found that it would have been cumulative. App. 664-65. Further, to the extent that Taquanna's testimony would have contradicted Ware's testimony that Taquanna and Tatum were dating, the PCR court found that this testimony was not credible because Taquanna had a tattoo in Tatum's honor, and Tatum bought her earrings on Valentine's Day. App. 666. Further, it found trial counsel's decision not to call or interview Taquanna was a reasonable strategic decision because Taquanna was unconscious at the time of the shooting. App. 666.[9]

As to Rose's testimony, the PCR court found that trial counsel was not ineffective for failing to call Rose because her testimony was inconsistent with a prior statement to law enforcement as well as the testimony of two state's witnesses. App. 669. Further, the PCR court found that there was "no question that neither the mother or father knew why Wideman shot and whether it was accident or self-defense." App. 669. The PCR court also found that trial counsel was not ineffective for failing to call Wideman, Sr., for similar reasons. App. 670.

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[9] Later, however, the PCR court stated the question of whether trial counsel's decision not to call Taquanna was strategic was irrelevant to its analysis. App. 667 ("This Court finds that whether or not it was 'strategic' is not a relevant issue or question because in fact the decision to not do that was knowing because of what he already knew about the sister's incapacity at the time of the event based upon the entire record and was not deficient.").

ARGUMENT

The PCR court erred in finding trial counsel not ineffective when he failed to interview or to call three favorable defense witnesses.

The PCR court was not presented with any evidence demonstrating a valid strategic reason for failing to call Petitioner's three witnesses. Further, there is a reasonable probability that the testimony of the three witnesses would have changed the results of Petitioner's trial. Therefore, the PCR court erred in denying post-conviction relief. This Court should grant certiorari and reverse.

To establish ineffective assistance of counsel, a PCR applicant must make a twofold showing: (1) counsel's representation fell below "an objective standard of reasonableness;" and (2) but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); *accord, Strickland v. Washington*, 466 U.S. 668 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Smith v. State*, 386 S.C. 562, 566, 698 S.E.2d 629, 631 (2010). If counsel's decisions are part of "sound trial strategy," those decisions are "virtually unchallengeable." *Strickland*, 466 U.S. at 690. However, "[c]ounsel must *articulate* a *valid* reason for employing a certain strategy to avoid a finding of ineffectiveness." *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (*citing, inter alia, Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)) (first emphasis added, second emphasis in original).

A. The PCR court erred by finding there was a valid strategic reason not to call the defense witnesses.

The PCR court operated under the assumption that it was permitted to assume trial counsel was acting within a reasonable trial strategy based on what it could read from the record of Petitioner's trial. However, South Carolina law requires more than assumptions. This Court

has "held that neither the PCR court nor the appellate court can conclude trial counsel exercised a valid trial strategy unless evidence is presented as to what the strategy actually was." *Lindsey v. State*, 447 S.C. 93, 133, 924 S.E.2d 104, 126 (2025) (disapproving of PCR court's holding that trial counsel who passed away prior to the PCR hearing exercised "reasonable professional judgment" for not calling a mitigation expert).[10]

Here, trial counsel could not have had a valid strategy for not calling Raeford Wideman, Sr., or Taquanna Blassingame as witnesses—he did not even attempt to ascertain what that testimony would have been. "Decisions made in ignorance of relevant, available information cannot be characterized as strategic." *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014) (*citing, Porter v. McCollum*, 558 U.S. 30, 39-40 (2009)). The PCR court erred in imputing reasonable strategy on trial counsel, when trial counsel never "*articulated* any strategy at all." *Gilchrist v. State*, 350 S.C. 221, 228 n.2, 565 S.E.2d 281, 285 n.2 (2002) (emphasis in original); *Bruno v. State*, 347 S.C. 446, 451, 556 S.E.2d 393, 395 (2001) (finding no evidence supported PCR court's ruling that there was a valid strategy for trial counsel's decisions when "counsel in the instant case gave *absolutely no explanation for his failure to object.*" (emphasis added)).[11]

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[10] In support of the opposite proposition, the PCR court relied on two cases from other jurisdictions: *Wood v. Allen*, 558 U.S. 290 (2010), and *Geralds v. State*, 111 So.3d 778 (Fla. 2010). App. 663. Neither case supports the PCR court's holding. *Wood* was about the proper standard for federal habeas courts to use when reviewing a state court's factual findings. *See generally* 558 U.S. 290. *Geralds* was about a PCR petitioner's nonsensical theory that his trial counsel "should have presented evidence of [a] lack of evidence." *See* 111 So.3d at 795. Neither case can support deviation from this Court's long-standing jurisprudence which uniformly commands that a trial counsel must *articulate* valid strategic rationale.

[11] In fact, the PCR court's order stated the law as: "A strategic or tactical decision does not have to be articulated by counsel on the record before the Court may acknowledge it...." App. 663. This is directly contrary to this Court's jurisprudence.

Trial counsel must "*articulate*" a valid reason for employing a certain strategy. *Bruno*, 347 S.C. at 451, 556 S.E.2d at 395 (emphasis in original). Trial counsel did not do so here. Thus, the PCR court erred by imputing strategy onto him anyway. The analysis must proceed in that light.

B. But for trial counsel's deficient performance, the jury would have heard three witnesses testify that Petitioner acted in self-defense.

Because the PCR court was not presented with any evidence demonstrating a valid strategic reason for failing to call Petitioner's three witnesses, trial counsel was ineffective. Further, Petitioner demonstrated a reasonable probability that the result of his trial would have been different but for the errors. This Court should reverse.

This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which *at a minimum* includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (emphasis added) (citing, *inter alia*, *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). To show that trial counsel performed deficiently, Petitioner must show that did not conduct a reasonable investigation. *Id.* at 457, 710 S.E.2d at 64. To show prejudice, Petitioner must show that the evidence produced during the PCR hearing is not "cumulative" or "otherwise aid[s] evidence introduced at trial." *Id.* at 459, 710 S.E.2d at 66 (*citing, inter alia*, *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998)).

Here, trial counsel rendered deficient performance in failing to call or to even interview three members of Petitioner's family who were at the scene. Trial counsel did not articulate a valid strategic reason for failing to interview or to call the witnesses. Therefore, the only remaining issue is whether Petitioner was prejudiced.

Petitioner demonstrates prejudice by showing that there is a "reasonable probability" that, but for trial counsel's errors, the result of the trial would have been different. *Weik*, 409 S.C. at 238, 761 S.E.2d at 769. "Reasonable probability" is a probability "sufficient to undermine confidence in the outcome." *Smith*, 386 S.C. at 566, 698 S.E.2d at 631.

This self-defense case would have ended differently, had the jury heard from the three witnesses who testified at the PCR hearing. The evidence presented by the state at trial was not overwhelming by any meaning of the word. The state called only two witnesses that contradicted Petitioner's theory of self-defense: Briana Ware and Willie McDonald. Ware's testimony, in relevant part, was that she told Petitioner that Tatum was his sister's boyfriend and that they were fine. App. 269, ll. 21-23. McDonald testified that he heard Petitioner say "you gonna die mother f**" or "something like that" immediately before shooting. App. 296, ll. 11-13.

Start with McDonald. McDonald provided the only evidence of malice. McDonald also testified that he was "sure" Petitioner fired from the driver's side of the vehicle. App. 296, ll. 14-19. This testimony was contradicted by forensic evidence. Further, McDonald had prior felony convictions for ABHAN, burglary second degree, and shoplifting, and had pending criminal charges for failure to stop for blue lights, larceny, and other minor charges. App. 299, ll. 4-25. Further still, the state's other main witness, Ware, did not make any such assertions about what Petitioner said or did not say, despite being seated mere feet away from him. In short, McDonald's testimony was thoroughly contradicted by the state's own evidence and came from a career criminal.

That leaves Ware. Ware testified that she told Petitioner that Tatum was Taquanna's boyfriend and that Ware and Taquanna were okay. However, Petitioner's witnesses presented

testimony to the PCR court that would have impeached or contradicted this very important testimony.

Rose Wideman testified that Ware was highly intoxicated on the night of the shooting. App. 563, ll. 6-16. So much so that her speech was slurred, her eyes were red, and the next morning, she could not remember that she had spoken to Rose at all. App. 568, ll. 5-17. Further, Rose's testimony would have played a critical role in bolstering Petitioner's defense theory that he was concerned for Taquanna's safety. Rose testified that Taquanna was so out of it that she could not even tell if Taquanna was still alive. App. 554, ll. 11-13. Further, she provided evidence that Petitioner was telling Tatum to turn off the vehicle so that he could check on Taquanna. App. 549, ll. 4-7. Further, Rose testified that she believed Petitioner had no other choice but to act as he did – testimony that would have supported his defense. App. 656, ll. 5-8; *cf. Bannister v. State*, 306 Ga. 289, 293, 830 S.E.2d 79, 85 (2019) (testimony that defendant "was a hero who saved lives" supported defense of self or others jury instruction).

Taquanna testified that she never told Petitioner about Tatum, which provides evidence that Petitioner did not know Tatum. App. 591, ll. 8-10. She further testified that she was more intoxicated that night then she can ever remember being and that it was possible she was drugged. App. 592, l. 21 – 106, l. 1. Taquanna's testimony is evidence that she was in actual danger of death or serious bodily injury. She also testified that, had she not been so intoxicated, she would not have consented to Tatum driving her around, contradicting Ware's testimony that they were okay. App. 598, ll. 21-24.

Finally, Raeford Wildeman, Sr., testified that he was also instructing Tatum to turn off the car and hand him the keys. App. 607, ll. 3-5. He also provided testimony that Petitioner was in a dangerous situation standing next to a very deep ditch and being involuntarily moved by

Tatum's car. App. 605, l. 21 – 606, l. 7. He also provided a crucial piece of testimony that Tatum "definitely wasn't going to stop." App. 609, ll. 1-2. This testimony supports Petitioner's self-defense argument because it shows that Petitioner had no reasonable alternative but to employ deadly force. *See State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (fourth element of self-defense is "the defendant had no other probable means of avoiding the danger…than to act as he did in this particular instance.").

In sum, the testimony presented at the PCR hearing tended to show that Petitioner left his house in the early hours of the morning to find his sister incapacitated and laid across the backseat of a car driven by an unfamiliar male. The only other person in the car was Petitioner's distant cousin who herself was extremely intoxicated. Petitioner and his father—the owner of the car—told Tatum to turn off the car so that Petitioner could tend to his sister, whose parents believed could be dead or near death. Rather than doing so, Tatum began driving the car in reverse with Petitioner still hanging out of the open rear passenger door taking Petitioner with it. Petitioner, in a split-second decision, shot and killed Tatum – a decision which every sober witness to the event believed to be justified. If the jury was presented with this additional evidence, there is a reasonable likelihood that they would have returned a verdict other than guilty of murder.

The state asserted to the PCR court that there was no evidence that Tatum was intentionally trying to hit Petitioner with the car. App. 626, ll. 7-8. This misses the point. Petitioner, when acting in self-defense, has the right to act on appearances, even if his interpretation of those appearances is objectively incorrect. *State v. Fuller*, 297 S.C. 440, 445-44, 377 S.E.2d 328, 331 (1989). The evidence presented to the PCR court shows that Tatum was

placing Petitioner—and Taquanna—in an immediate risk of death or serious bodily injury, a belief shared by two other witnesses to the event. What Tatum *intended* is without relevance.

For these reasons, trial counsel was deficient in failing to conduct a reasonable investigation and for failing to call three witnesses who presented PCR testimony that was highly favorable to Petitioner. The favorability of this evidence in conjunction with the overall weakness of the state's case demonstrates prejudice. Accordingly, the PCR court was wrong to deny post-conviction relief to Petitioner. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to permit fuller briefing on the issues presented.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of March, 2026.