

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Lexington County

Honorable David P Caraker, Jr., Circuit Court Judge
—————

CHARLES A. MOREHOUSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002161
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

Lara M. Caudy
Senior 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

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the jury instruction that malice may be inferred when the deed is done with a deadly weapon, since the instruction omitted the permissive inference language approved by this Court in State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), and where Petitioner was prejudiced because there is a reasonable probability the erroneous instruction contributed to the verdict given that there was little, if any, evidence of malice aside from the use of a gun?

STATEMENT OF THE CASE

The state's theory of this case was inherently inconsistent. The state tried to persuade the jury that Petitioner was a drug kingpin with multiple people in his employment who murdered the decedent because he suspected he was an informant. However, as trial counsel argued, Petitioner's actions the night of the decedent's death were not those of a sophisticated drug lord. App. 925, l. 6 – 927, l. 13. As trial counsel put it, had Petitioner planned to murder the decedent, he would not have texted and called him immediately beforehand and would not have left the decedent's cell phone at the scene. App. 925, l. 6 – 927, l. 13. Petitioner's actions were more consistent with his defense that this was an accidental death.

Around 11:30 p.m. on August 3, 2015, Keith Lytes was driving down a remote dirt road in Lexington County when he saw a white car and a body. App. 230, l. 13 – 232, l. 14. Lytes went to a nearby fire department and alerted the firemen. The firemen called 911 after Lytes took them to the body. App. 165, l. 15 – 168, l. 14. The 911 call was made at 11:42 p.m. App. 157, ll. 5-24.

At the body's location, the police found a cigarette butt, shell casings for a .40 caliber gun, and the decedent's phone in his pocket. App. 645, l. 8 – 653, l. 13. The decedent also had two hundred and twenty dollars in cash in his pocket. App. 650, l. 11 – 651, l. 25. The decedent's pants pockets were not pulled out. App. 651, ll. 17-21. The police only found three shell casings. App. 659, ll. 2-4. The pathologist testified that the decedent's body had between six to ten gunshot wounds. App. 837, ll. 9-19. She said the decedent's wounds were consistent with someone standing over him firing downward. App. 844, l. 2 – 847, l. 20. The ground where the decedent was found was described as soft "sugar sand." App. 195, l. 20 – 196, l. 1. Despite the soft sand underneath the decedent's body, the police could not find any other casings

even with the use of metal detectors. App. 676, l. 11 – 681, l. 22. The crime scene investigator speculated that the other casings could have been buried in the sand despite the exhaustive search. App. 676, l. 11 – 681, l. 22.

Investigators activated the decedent's cell phone and discovered calls and text messages in the hours leading up to the discovery of the body with a phone number they claimed belonged to Petitioner. App. 374, l. 10 – 381, l. 5. The police claimed Petitioner's phone number was stored in the decedent's phone as "A A King Chuck." The text messages arranged a meeting in Red Bank. At 11:11 p.m., the decedent texted, "Turning on 302 end of lagoon." App. 374, l. 10 – 381, l. 5. The investigator explained the "lagoon" is a pool formed by an old rock quarry near where the decedent's body was found. App. 374, l. 10 – 381, l. 5. The state's cell phone expert claimed Petitioner's phone records showed communications with codefendant Wiley Sisk and that cell towers likely placed Petitioner in the vicinity of the crime scene. App. 776, l. 20 – 803, l. 23.

Petitioner gave a statement to the police and explained that the decedent's death was likely the result of an accidental shooting. Petitioner admitted being at the scene when the decedent was shot, but explained that he and his codefendant Sisk only intended to give the decedent a beating in retaliation for being a suspected informant and never intended to murder him. Sisk came out of the woods with a baseball bat and began fighting the decedent. Petitioner fired his gun in an attempt to break up the fight, but due to Petitioner's night blindness, could not tell what happened to the shots he fired.¹ State's Exhibit No. 22 (Audio Interview CD); See App. 876, l. 23 – 882, l. 22.

¹ The trial court refused Petitioner's request to charge the jury on voluntary manslaughter and the defense of accident. App. 876, l. 23 – 882, l. 22.

A Lexington County grand jury indicted Petitioner in December 2015 for murder, in February 2016 for possession with intent to distribute methamphetamine, second offense, and in October 2016 for criminal conspiracy and possession of a weapon during the commission of a violent crime. App. 1135-1142. Petitioner's case was called to trial on January 9, 2017, before the Honorable Eugene Griffith, Jr., and a jury. App. 1. Assistant Solicitors Suzanne Mayes and Lester McGill Bell, Jr. represented the state. John Hilliard represented Petitioner. App. 1.

On January 13, 2017, the jury found Petitioner guilty of murder, criminal conspiracy, the lesser included offense of possession of methamphetamine, and the weapons offense. App. 962, ll. 14-22. He was sentenced to life without parole for murder, ten years for conspiracy, five years for possession of methamphetamine, and five years for the weapons offense.² All sentences were ordered to be served concurrently. App. 986, ll. 1-7.

The Court of Appeals dismissed Petitioner's direct appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Morehouse, 2018-UP-452 (S.C. Ct. App. filed December 12, 2018). App. 1005-1006.

On November 22, 2019, Petitioner filed an application for post-conviction relief (PCR), and a memorandum in support of his application raising the claim argued in this petition. App. 1008-1024. The state filed a return to this application on March 6, 2020. App. 1025-1035. With the assistance of counsel, Petitioner filed an amended application on August 16, 2024, again raising the claim argued in this petition. App. 1036-1038. An evidentiary hearing was held on

² Petitioner alleged during his post-conviction relief (PCR) action that his trial counsel was ineffective for failing to object to his ten year sentence for criminal conspiracy since it was an illegal sentence. Pursuant to S.C. Code Ann. § 16-17-410, the maximum sentence that may be imposed for criminal conspiracy is five years. Consequently, the PCR court found counsel was deficient for failing to object to the illegal sentence, vacated Petitioner's ten year sentence, and remanded for resentencing on the criminal conspiracy conviction. App. 1095-1096.

August 28, 2024, before the Honorable David P. Caraker, Jr.³ App. 1039. Assistant Attorney General Talida Balaj represented the state. Ola Johnson represented Petitioner. App. 1040.

Petitioner testified at the hearing that his trial counsel did not explain to him why counsel did not object to the jury instruction on inferred malice. App. 1051, ll. 7-11. During trial, the court instructed the jury in part:

Malice aforethought may be either expressed or it may be inferred. These terms do not mean different kinds of malice, but merely the manner in which the malice was shown to have been existing, that is by either direct evidence or by an inference from the facts and circumstances which are proven by the state. Express malice is when a person speaks words of hatred or ill will towards another or whether the person prepared beforehand to do an act which was later accomplished. For example, lying in wait or making preparations to show the deed was within the defendant's mind would be express malice.

Now malice also may be inferred from conduct by the defendant showing a total disregard for human life. Inferred malice may also arise when the deed is done by a deadly weapon. A deadly weapon is an article or an instrument likely to cause death or great bodily injury. Whether an instrument has been used as a deadly weapon depends upon the facts and circumstances of each case. Examples of instruments that can be deadly weapons are shotgun, rifle, pistol, knife, razor, and other things of that type.

App. 944, l. 15 – 945, l. 11. As Petitioner explained, for whatever reason, trial counsel did not object to this charge.

Suzanne Mayes, the assistant solicitor who tried the case, testified that she did not “recall there being anything inconsistent with the [implied malice] charge and the current state of the law.” She explained that Petitioner’s trial occurred in 2017 and Belcher⁴ was decided in 2009. Mayes emphasized that this was not a self-defense case, implying that, in her opinion, pursuant

³ Petitioner’s trial counsel, John Hilliard, is deceased and, consequently, did not testify at Petitioner’s PCR hearing. App. 1042, ll. 16-17.

⁴ State v. Belcher, 386 S.C. 597, 685 S.E.2d 802 (2009).

to Belcher, a jury instruction that malice may be inferred when the deed is done with a deadly weapon was proper. App. 1066, l. 11 – 1067, l. 2.

The PCR court denied Petitioner relief. App. 1078-1134. The court determined the jury instruction on implied malice was “properly given.” It found the assistant solicitor’s testimony that the instruction was “correct based on the controlling law at the time” credible. The court stated that State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), was controlling law at the time of Petitioner’s trial, and that pursuant to Belcher, a jury instruction that malice may be inferred from the use of a deadly weapon is proper unless evidence is presented that would reduce, mitigate, excuse or justify a homicide. Because there was no such evidence in Petitioner’s case, the court concluded the charge was correctly given. Accordingly, the court found trial counsel was not deficient for failing to object to the charge. Notably, however, in so finding, the PCR court acknowledged that this Court in Belcher stated that “the permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder.” App. 1108-1112.

Because Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the jury instruction that malice may be inferred when the deed is done with a deadly weapon, since the instruction completely omitted the permissive inference language, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the jury instruction that malice may be inferred when the deed is done with a deadly weapon, since the instruction omitted the permissive inference language approved by this Court in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), and where Petitioner was prejudiced because there is a reasonable probability the erroneous instruction contributed to the verdict given that there was little, if any, evidence of malice aside from the use of a gun.

Petitioner's trial counsel was ineffective for failing to object to the jury instruction that malice may be inferred when the deed is done with a deadly weapon since the instruction omitted the permissive inference language approved by this Court in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983). Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the erroneous instruction contributed to the verdict given that there was little, if any, evidence of malice aside from the use of a gun.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Strickland*, 466 U.S. at 687-88.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

In State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), this Court suggested the following charge on implied malice and the use of a deadly weapon:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. **If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.**

(emphasis added). The Court stated in Elmore that it would only tolerate slight deviations from this charge. 279 S.C. at 421, 308 S.E.2d at 784.

In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), this Court referred to the first sentence of the Elmore charge as the standard implied malice charge and the second sentence as the permissive inference charge. The Court stated at the time that both the standard implied malice charge and the permissive inference instruction remained valid. Id. at 612 n. 10, 685 S.E.2d at 810 n. 10. However, the Court held that “the use of a deadly weapon implied malice charge should no longer be given when evidence is presented that would reduce, mitigate, excuse or justify the killing.” Id. at 610, 685 S.E.2d at 809.

In Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016), this Court held Gibson’s trial counsel was deficient for failing to object to the charge that malice may be inferred from the use of

a deadly weapon because the charge did not include the permissive inference language approved by this Court in Elmore. The Court emphasized that the instruction given in Gibson clearly deviated from the suggested Elmore charge because it did not contain the permissive inference language, which was not a slight deviation that would be permissible under Elmore. Gibson, 416 S.C. at 264-65, 786 S.E.2d 123-24. This Court further held that Gibson was prejudiced by his trial counsel's deficient performance because there was "not overwhelming evidence of malice" and "there was little evidence of malice aside from the use of a gun." Id. at 266, 786 S.E.2d at 124. Accordingly, the Court reversed his conviction and remanded the case for a new trial.

Like in Gibson, Petitioner's trial counsel was deficient for failing to object to the jury instruction on implied malice since the instruction completely omitted the permissive inference language approved by this Court in Elmore. While trial counsel did not testify at the evidentiary hearing because he was deceased, counsel could not have articulated a valid strategic reason for failing to object to this erroneous instruction, which unconstitutionally shifted the burden of proof. Moreover, Petitioner's trial was in 2017 after this Court published its opinions in Elmore and Gibson. Accordingly, unlike the assistant solicitor maintained at Petitioner's PCR hearing and unlike the PCR court found, the instruction as given was inconsistent with the current state of the law because it omitted the permissive inference language.

Petitioner was prejudiced by trial counsel's deficient performance because, like in Gibson, there was little, if any, evidence of malice aside from the use of a gun. Petitioner told the police in his recorded statement that the decedent's death was accidental. He explained that he shot three times to the left of the decedent to break up the altercation between the decedent and Petitioner's codefendant, but because of Petitioner's night blindness, he was uncertain as to where he shot.

Respectfully, this Court should hold trial counsel was ineffective, reverse Petitioner's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing. Petitioner ultimately requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of March, 2026.

STATE OF SOUTH CAROLINA
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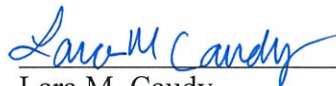
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Alton Morehouse states:

1. She is an 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, which was held on August 28, 2024, before the Honorable David P. Caraker, Jr., 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 Charles Alton Morehouse.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of March, 2026.

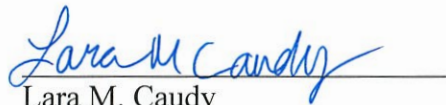
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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This 27th day of March, 2026.