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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Eugene P. Warr, Circuit Court Judge

ANTONIO D. SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002508

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX.....	i
ISSUE PRESENTED.....	1
STATEMENT.....	2
ARGUMENT	
Trial counsel was ineffective in failing to request a jury instruction on the law of accident.....	5
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL	10

ISSUE PRESENTED

Was trial counsel ineffective in failing to request a jury instruction on the law of accident?

STATEMENT

In April of 2011, the Jasper County Grand Jury indicted Petitioner, Antonio Scott, for murder, indictment #2011-GS-27-00216. (App. pp. 233-234). On December 5, 2011, Petitioner proceeded to jury trial before the Honorable Carmen T. Mullen. Robert Hughes represented Petitioner at trial. Robert Ferguson prosecuted the case. The jury found Petitioner guilty. Judge Mullen sentenced Petitioner to thirty (30) years in prison. (App. p. 235). A timely notice of intent to appeal was filed and the direct appeal perfected. On February 19, 2014, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct.App. 2014). (App. pp. 275-280). A timely petition for rehearing was filed and then denied on May 2, 2014.

On May 20, 2014, Petitioner filed a petition for writ of certiorari with the South Carolina Supreme Court. On September 11, 2014, the South Carolina Supreme Court granted the petition for writ of certiorari. After hearing argument, the Court affirmed. State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). (App. pp. 281-287). A timely petition for rehearing was filed and then denied on December 16, 2015. The remittitur issued on December 16, 2015.

In a letter to the Clerk of the South Carolina Supreme Court dated September 9, 2021, Petitioner wrote that he filed an application for post-conviction relief [PCR] with the Jasper County Clerk of Court on January 15, 2016. (App. pp. 288-292). Petitioner wrote that he filed an amended application in April of 2016. (App. p. 288). Petitioner also stated that he had not received responses from the Jasper County Clerk of Court. (App. p. 289). The Appendix includes an inmate receipt for postage for legal matters dated January 15, 2016. (App. p. 292). In a letter dated September 15, 2021, the Clerk of the South Carolina Supreme Court forwarded Petitioner's letter to the Jasper County Clerk of Court. (App. p. 293). In a letter dated

September 30, 2021, the Jasper County Clerk of Court wrote to Petitioner and advised that her office did not have a PCR application on file. (App. p. 295). The clerk advised Petitioner to resubmit the application and included a blank PCR application. (App. p. 295). On October 12, 2021, Petitioner filed a PCR application and amendment. (App. pp. 296-313).

On January 25, 2022, the State filed a return and motion to dismiss. (App. pp. 314-325). The State did not request the appointment of counsel. (App. p. 314). On February 8, 2022, Petitioner filed a *pro se* motion to dismiss conditional order of dismissal. (App. pp. 338-341). On February 11, 2022, the Honorable Bentley Price signed a conditional order of dismissal. (App. pp. 326-337). On April 25, 2022, Petitioner filed a *pro se* proposed amendment. (App. pp. 343-345). Additionally on April 25, 2022, Petitioner filed a *pro se* motion for leave to amend. (App. pp. 346-348). On August 1, 2022, Petitioner filed a *pro se* objection to the conditional order of dismissal, a *pro se* proposed amendment, a *pro se* motion to dismiss conditional order of dismissal by the Respondent, and a *pro se* motion for leave to amend. (App. pp. 353-365).

On June 19, 2023, the Honorable Carmen T. Mullen signed the final order of dismissal without appointing counsel and without conducting a hearing. (App. pp. 366-368). Judge Mullen was also the trial judge. (App. p. 1). On July 5, 2023, Petitioner filed a *pro se* objection to the proposed final order of dismissal. (App. pp. 369-373). On July 26, 2023, Petitioner filed a timely *pro se* notice of intent to appeal. (App. p. 374). On August 7, 2023, Petitioner filed a *pro se* Rule 243 explanation. (App. pp. 375-377).

On February 21, 2024, Petitioner filed a petition for writ of certiorari appealing the dismissal. (App. pp. 378-388). The State filed a return on July 8, 2024, conceding Petitioner was entitled to a hearing on the issue of equitable tolling of the statute of limitations. (App. pp.

389-396). On August 2, 2024, the South Carolina Supreme Court remanded the case for a hearing on the issue of equitable tolling in response to the State's motion to dismiss. (App. p. 397). After a hearing before the Honorable Frank R. Addy, Jr., equitable tolling was granted. (App. pp. 398-399).

On September 19, 2025, Petitioner filed an amended PCR application. (App. pp. 400-401). The State filed an amended return on August 18, 2025. (App. pp. 403-410). On September 24, 2025, an evidentiary hearing was held before the Honorable Eugene P. Warr, Jr. Chelsea Marto represented Petitioner. Kylee Kanealey represented the State. In a written order signed November 4, 2025, Judge Warr denied relief and dismissed the application. (App. pp. 439-449). A timely notice of intent to appeal was filed on December 17, 2025. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel was ineffective in failing to request a jury instruction on the law of accident.

Petitioner, Antonio Scott, was at the apartment of his sister, Shareema Behlin (Behlin), on the evening of March 20, 2011, waiting for his son's mother, Akera Nelson (Akera), to drop his son off with him. (App. p. 114, line 10 – p. 115, lines 1-13). Akera drove to the apartment and took the son inside while her mother, Cynthia Nelson (Nelson), waited in the van. (App. p. 115, line 14 – p. 116, line 1). Akera claimed that Petitioner had a knife when she walked in the apartment. (App. p. 116, lines 3-8). As Akera was trying to calm Petitioner down, her mother entered the apartment uninvited, and began cursing at Petitioner. (App. p. 116, lines 9 -17). Akera testified, “Then, they started arguing or whatever; at that point, I don’t know what he did with the knife because when he hit her, I didn’t see the knife.” (App. p. 116, lines 17-19). Behlin testified that Petitioner hit Nelson with the inside of his hand. (App. p. 138, lines 15-16).

Investigator Daniel Litchfield (Litchfield), of the Ridgeland Police Department testified, “He [Petitioner] told us that he was there. He had an altercation, a verbal argument, with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, he stepped to the side and did a – for lack of a better term, a martial arts move, pushing her up, causing her to stab herself in the throat.” (App. p. 127, line 22 – p. 128, lines 1-3).

Dr. Lee Marie Tormos (Dr. Tormos), a forensic pathologist testified that Nelson died from blood loss due to the single stab wound to the neck. (App. p. 148, lines 12-13; App. p. 153, lines 20-22). After counsel demonstrated the martial arts maneuver with Dr. Tormos, the doctor agreed that the wound inflicted could have been an accident. (App. p. 157, line 2 – p. 158, 158, lines 1-22).

During the charge conference the trial judge stated she was not going to charge involuntary manslaughter. (App. p. 171, lines 4 – 25). Trial counsel objected to a charge on voluntary manslaughter but requested a charge on accident and self-defense. (App. p. 172, lines 1-5). After discussion, trial counsel withdrew the request for an accident charge. (App. p. 173, line 3 – p. 174, lines 1-3). The judge said, “Under his version of him doing some kind of technique, or move, I could see self-defense. So again, you are not requesting accident. Do you want to go with self-defense? For it to have been an accident, he would have had to have had the knife.” (App. p. 176, lines 17-21). Trial counsel agreed. (App. p. 176, line 22). The trial court ultimately charged self-defense and voluntary manslaughter, but refused to give an instruction on involuntary manslaughter. (App. p. 184, line 12 – p. 185, lines 1-13; App. p. 214, line 6 - p. 219, lines 1-4). The failure to charge involuntary manslaughter was raised on direct appeal. Trial counsel was ineffective in withdrawing the request for a charge on accident.

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 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.

Trial counsel was ineffective in failing to continue to request a charge on the law of accident. There is a reasonable probability that if counsel had requested the accident charge, the result of the proceedings would have been different. In State v. Brown, 205 S.C. 514, 32 S.E.2d 825, 828 (1945), the South Carolina Supreme Court wrote:

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident. 26 Am.Jur., Sec. 220, Page 305. It is not such matter of defense as throws upon or shifts to the accused the burden of proving that the homicide occurred by accident or misadventure; the burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.

In State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018) the South Carolina Court of Appeals wrote:

“[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion.” State v. Stanko, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013). “When reviewing the [trial] court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608–09 (Ct. App. 2012). “The law to be charged to the jury is determined by the evidence presented at trial.” State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). “If there is any evidence to support a jury charge, the trial [court] should grant the request.” State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

Petitioner was entitled to a charge on both the law of self-defense and the law of accident. “While it is true accident and self-defense ‘are often mutually exclusive,’ a trial court should charge both when there is evidence in the record to support both charges. See Williams, 400 S.C.

at 317, 733 S.E.2d at 610.” State v. White, 425 S.C. 304, 312, 821 S.E.2d 523, 528 (Ct. App. 2018). There is evidence in the record that when Nelson attacked Petitioner with a knife, Petitioner acted lawfully in self-defense with a martial arts move that accidentally resulted in Nelson stabbing herself in the neck. Under the narrow facts of this case, Petitioner did not have to be in possession of the knife to be entitled to a charge on accident.

In State v. Stoots, 445 S.C. 127, 138, 912 S.E.2d 248, 254 (2025), decided after Petitioner’s 2011 trial, the South Carolina Supreme Court wrote:

An appropriate charge on the law of accident as it applies in this case, for example, may have been something like this:

The defendant has asserted the defense of accident. This is not technically a defense, but rather is to simply assert that the State failed to prove the necessary criminal intent. Thus, I remind you that the State must prove beyond a reasonable doubt that the defendant acted with criminal intent, which means—as I told you earlier—the State must prove the defendant acted with a mental state of conscious wrongdoing, or in other words, that he committed an intentional act which he knew was likely to cause injury.

In Stoots the Court found the trial court did not err by refusing to charge the requested three elements of accident found in State v. Brown, 205 S.C. 514, 32 S.E.2d 825, (1945); State v. Commander, 396 S.C. 254, 721 S.E.2d 413, (2011); and State v. Owens, 427 S.C. 325, 330, , 831 S.E.2d 126, 128, (Ct. App. 2019), because the court clearly instructed the jury the State must prove Stoots acted with criminal intent. In contrast, the court in the present case did not clearly instruct the jury that the State must prove the defendant acted with criminal intent meaning a mental state of conscious wrongdoing. Petitioner was prejudiced by counsel’s failure to continue to request an accident charge.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of July, 2026.

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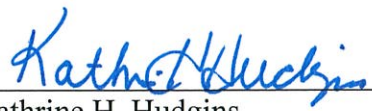
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antonio Scott states:

1. She is Senior 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 before Judge , which was held on , 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 Antonio Scott.

Respectfully Submitted,



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of July, 2026.

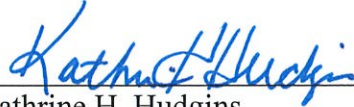
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CERTIFICATE OF COUNSEL

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."



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This 15th day of July, 2026.