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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Oconee County
R. Lawton McIntosh, Trial Judge
Jane H. Merrill, Post-Conviction Relief Judge

Appellate Case No. 2026-000029

CLIFTON E. SMITH, SCDC # 259061,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER’S STATEMENT OF ISSUE ON CERTIORARI

“Whether the PCR court erred in finding trial counsel provided effective assistance of counsel where trial counsel failed to object to the standard self-defense charge and request a charge tailored to the non-lethal facts of the case?”

RESPONDENT’S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief court properly find that Petitioner failed to meet his burden of establishing that trial counsel was constitutionally ineffective for failing to object to a portion of the self-defense jury instruction during his trial for repeatedly stabbing the victim with a knife where the jury instruction was a proper statement of the law regarding self-defense and there was not a reasonable likelihood that the result of Petitioner's trial would have been different but for this jury instruction?

STATEMENT OF THE CASE

Procedural Background

Petitioner Clifton E. Smith is currently incarcerated within the South Carolina Department of Corrections serving a fifteen-year term of imprisonment following his conviction and sentence for assault and battery of a high and aggravated nature. The conviction stems from a December 26, 2017, incident wherein Petitioner, a front seat passenger, turned around and stabbed the rear passenger multiple times as they were returning from a social gathering. As a result of the stabbing, Petitioner was arrested and subsequently indicted by an Oconee County Grand Jury for assault and battery of a high and aggravated nature during its May 2018 term.

While he was in pre-trial detention, G. Lee Cole, Jr., Esquire, was appointed to represent Petitioner and they met several times before Petitioner was released on a personal recognizance bond.¹ (App. 344-346, 352). On November 18, 2019, the State called Petitioner's case to trial before the Honorable R. Lawton McIntosh, circuit court judge. Following the denial of Petitioner's motion for dismissal based on the South Carolina Protection of Persons and Property Act, Petitioner proceeded to a jury trial was convicted as indicted. Judge McIntosh sentenced Petitioner to fifteen years of imprisonment.

Petitioner timely appealed his conviction², arguing the trial court abused its discretion

¹ During the pendency of this General Sessions case, Petitioner was on probation for a prior conviction and received a six-month sentence for violating probation at a December 2018 hearing, but because of the credit he received for the time served in pre-trial detention, Petitioner's sentence was time served and he was released on a personal recognizance bond and released to Spartanburg County for an unrelated methamphetamine charge. (App. 328, 343-344).

² On April 8, 2020, while his direct appeal was pending, Petitioner prematurely filed his first post-conviction relief application, alleging various allegations of ineffective assistance of counsel (2020-CP-37-00247). In response, Respondent moved to summarily dismiss the application without prejudice based on the pending direct appeal pursuant to Rule 71.1, SCRPC. On July 12,

when it refused to allow Petitioner to impeach the victim with prior convictions (three prior drug offenses, a failure to stop for a blue light conviction, and a Georgia conviction for fleeing or attempting to elude a police officer that is not an offense carrying in excess of a year of imprisonment). Following briefing, the Court of Appeals affirmed the conviction in an unpublished opinion. State v. Smith, Unpub. Op. No. 2022-UP-167 (S.C. Ct. App. Filed Apr. 6, 2022). The Remittitur was filed on April 29, 2022.³

On May 5, 2022, Petitioner initiated this underlying post-conviction relief action with the filing of his *pro se* application, asserting the following claims for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective because he did not impeach the victim regarding past drug use. On cross examination, Counsel did not question the victim about past drug use.
2. Abuse of Discretion on the part of the Trial Judge
 - a. The trial judge abused his discretion by not allowing the defendant to impeach the victim concerning prior convictions.

(App. 284-293). Susannah Ross, Esquire, was thereafter appointed to represent Petitioner. Respondent filed a return and partial motion to dismiss, asking for a hearing on the claims of ineffective assistance of counsel and summary dismissal on the claims of trial court error. (App. 295-312). Petitioner, through appointed counsel, then filed an amended application on September

2021, the Honorable J. Cordell Maddox, Jr., signed an order dismissing Applicant's application without prejudice.

³ While not included in the Appendix, the records from Petitioner's direct appeal and initial post-conviction relief action were attached to Respondent's return to the application, were before the post-conviction relief court, and were part of the post-conviction relief record. See App. 312 (listing the table of contents for the return attachments, and 320 (listing all the documents before the lower court)); Rule 243(f), SCACR (requiring an appendix for a post-conviction relief appellate action to include the entire low court record). The records from Petitioner's initial post-conviction relief action are accessible on the Oconee County Tenth Judicial Circuit Public Index website: <https://publicindex.sccourts.org/Oconee/PublicIndex/PISearch.aspx>. The records from Petitioner's direct appeal are accessible on the South Carolina Appellate Case Management System C-Track: <https://ctrack.sccourts.org/public/caseSearch.do>.

3, 2025, alleging the following:

1. Ineffective Assistance of Counsel
 - a. Failure to object to reference to Applicant being on probation, especially when the judge ruled that witness M. Reid could not be impeached on his prior drug conviction for possession of methamphetamine, first and second offense, failure to stop for a blue light, use of communication facility in commission of a felony involving controlled substance, and fleeing or attempting to elude a police officer. p. 150. pp. 163-73
 - b. Failure to preserve the record as to whether Reid's conviction for fleeing or attempting to elude a police officer was admissible pursuant to Rule 609(a)(1) SCRE, and the *Colf* factors. See *State v. Colf*, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2003).
 - c. Failing to cite Rule 9 SCCrimP in the motion for a continuance and argue the continuance was for good cause as counsel could not be effective because he was unable to adequately prepare for trial without speaking to his client and advising him to reconsider his plea offer because the A & B 1st charge was now ABHAN.1 Applicant was released on bond for the charge of A & B 1st Degree in February 2018. Applicant appeared for a probation violation hearing in December 2018 and was sentenced to thirteen (13) months during which time he did not meet with his lawyer. Upon Applicant's release he did not receive notification of November 18, 2019, court date or that his charge was proceeding as ABHAN. p. 49, p. 53.
 - d. Failing meet with Applicant to advise, instruct and prepare for trial.
 - e. Failure to inform Applicant of plea offer as counsel's duties include the duty to fully communicate with the client and correctly advise them so that the client can make an informed decision regarding any plea proposals by the State. See *Davie v. State*, 675 S.E.2d 416, 381 S.C. 601 (S.C. 2009).
 - f. Failing to request credit for time served pursuant to Sec.24-13-40.
2. Due Process violations in the indictment procedure.

An evidentiary hearing on this action was convened September 9, 2025, before the Honorable Jane H. Merrill, circuit court judge. Petitioner appeared along with counsel Ross. Respondent was represented by Assistant Attorney General Ryan T. Kowalski of the South

Carolina Attorney General's Office. The post-conviction relief court heard testimony from Petitioner and trial counsel Cole. During his post-conviction relief hearing testimony, Petitioner claimed that the victim was armed with a gun and beat him so severely that Petitioner was knocked unconscious. (App. 324-325, 332-333). Petitioner claimed that the only reason he stabbed the victim was because the victim was reaching for his gun and he feared for his life. (App. 325, 336). However, he also noted that the victim had secured the gun in a backpack and was not armed during the stabbing. (App. 332).

During his testimony, trial counsel Cole testified that he viewed the case as an imperfect self-defense case, noting, "[Petitioner] had some arguments to be made, but the problem with going to trial was going to be the severity of the injuries to the alleged victim and whether it was proportionate to what the victim--to the victim's striking [Petitioner]." (App. 342). He elaborated that the victim had attacked Petitioner "just with his hands" and Petitioner responded "by cutting him very severely multiple times with a knife." (App. 342-343).

At the conclusion of the hearing, the post-conviction relief court took the matter under advisement. (App. 376). The court later denied the application and subsequently issued a written order filed on November 24, 2025, finding Petitioner failed to establish any constitutional violations or deprivations entitling him to relief and denying the application with prejudice pursuant to S.C. Code Ann. § 17-27-80. (App. 378-400).

Regarding the allegation subject to this appeal, the court found that the jury instruction as a whole was proper statement of the law regarding self-defense, that it was clear to the jury that there was no "fatal blow" in this case, and trial counsel was not deficient for failing to object to the fatal reference in the jury instruction. (App. 396-397). While Petitioner filed a motion to reconsider pursuant to Rule 59(e), SCRCP, as to another issue, he did not seek reconsideration as

to the issue subject to this appeal. (App. 401-402). Following the court's denial of his motion to reconsider, Petitioner then initiated this instant appeal. (App. 403).

Summary of Facts Giving Rise to the Conviction

In December of 2017, Varia Galbreath (Galbreath) and Petitioner had a prior personal relationship, although whether it was romantic was disputed. (App. 150, 158, 177, 324). Upon Petitioner's request, Galbreath allowed Petitioner to stay at her house over the weekend during Christmas so he could go to his probation meeting on Monday. (App. 150). Her thirty-year-old son Michael Todd Reid (Victim) was also staying at Galbreath's home then. (App. 177). Galbreath gave Petitioner a couple of pocketknives with blades between two to four inches in length as a Christmas present. (App. 150-151). On the day after Christmas, Galbreath, Petitioner, and Victim were invited to Galbreath's daughter's home for a post-Christmas celebration. (App. 148, 150-151). Before leaving Galbreath's home, Petitioner opened the pocketknives and brought one with him to the family gathering. (App. 150-151).

At the gathering, Petitioner was gifted mini bottles of alcohol, which he promptly drank and became boisterous. (App. 151-152). Victim became upset by Petitioner's behavior and went outside to wait in the car. (App. 152-153). Galbreath cursed in frustration over Petitioner's behavior, upsetting her daughter who asked the group not to curse in front of her baby. (App. 152-153). At that point, Galbreath decided the group should leave her daughter's home. (App. 152).

On the drive home, Galbreath drove while Petitioner sat in the front passenger seat and Victim sat in the rear seat behind Petitioner. (App. 152). Galbreath and Victim were irritated that the family gathering was cut short by Petitioner's bad behavior, and Victim voiced his frustrations with Petitioner. (App. 153).

In response, Petitioner retorted that Victim did drugs. (App. 180-181). Galbreath and Victim both reported that Victim retaliated by slapping Petitioner one time. (App. 152-153, 159-161, 180-182). Galbreath stopped driving and immediately admonished the two men to stop the altercation. (App. 153-154, 181). Galbreath and Victim both stated the fight had stopped at that point and Galbreath resumed driving. (App. 154, 157-158, 162-163, 181). Unexpectedly, Petitioner suddenly “whirl[ed]” around in his seat and stabbed Victim repeatedly with his knife. (App. 154-155, 181-182). Galbreath stopped the vehicle again and pulled Petitioner off Victim to stop the stabbing. (App. 154-155, 181-182).

Based on the obvious severity of Victim’s injuries, Galbreath called for emergency assistance, and law enforcement and emergency medical care arrived on the scene. (App. 156-157). Petitioner put the knife on the trunk of the car when law enforcement came, and Galbreath testified it was the same knife she gave him as a Christmas present, contradicting Petitioner’s assertion to law enforcement that Victim was armed with the knife and Petitioner had taken it from him. (App. 156, 210-211).

Law enforcement noted that Petitioner was agitated, intoxicated, boisterous, and smelled of alcohol. (App. 201). Petitioner exclaimed to law enforcement that he had stabbed Victim and he would do it again (App. 210). He also stated that Victim ought to die and asked, “Did I get him good?” (App. 210-211). An officer on the scene noted that Petitioner had lacerations on his fingers and did not appear to have other injuries. (App. 211-212).

By the time Petitioner stopped stabbing Victim, Victim had stab wounds all over his body, including his abdomen, his legs, his arms, and his hands. (App. 157, 181-185). A first responder on the scene was “overwhelmed by the amount of blood that [he] saw on the ground and also the severity of the wounds to the victim.” (App. 208-09). The emergency medical technician who

arrived on the scene thought that some of the stab wounds were so severe and possibly life threatening enough to be transported to a Level I trauma center equipped to handle “severe slashing and stabbing wounds, wounds of that nature” rather than the nearest medical center. (App. 130-139.) Victim ultimately needed more than eighty staples to close his wounds. (App. 185). He also lost use of his hand for approximately four months and underwent surgeries and physical therapy to regain some motion in it. (App. 157, 185-186).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839-840 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly found that Petitioner failed to meet his burden of establishing that trial counsel was constitutionally ineffective for failing to object to a portion of the self-defense jury instruction during his trial for repeatedly stabbing the victim with a knife because the jury instruction was a proper statement of the law regarding self-defense and there was not a reasonable likelihood that the result of Petitioner's trial would have been different but for this jury instruction.

On appeal, Petitioner argues the post-conviction relief court wrongly denied relief based on counsel's failure to object to the trial court's instruction to the jury on self-defense and request a jury charge tailored to the "non-lethal facts of the case." (PWC 1). Specifically, Petitioner asserts that the jury instruction given during his trial referenced deadly force and contemptuous language "even though there were no facts adduced at trial that supported those portions of the charge." (PWC 7). He further argues that he suffered prejudice by trial counsel's failure to object to these portions of the jury instruction "because no deadly force was used in the case," thereby making the given instruction on self-defense "confusing and misleading." (PWC 9). However, Petitioner's claims fail for multiple reasons. First, Petitioner's assertions that the record lacks evidence of deadly or lethal force are directly refuted by the trial court record that is replete with evidence establishing that Petitioner's force when repeatedly stabbing Victim with a knife was indeed deadly force that very well could have been lethal had Victim not received immediate medical care. Second, the jury instruction given by the trial court was a correct statement of the law and was appropriate based on the facts of the case, and therefore, could not have confused or mislead the jury. The record and case law support the post-conviction relief court's determination that trial counsel was not deficient for his handling of the self-defense portion of the jury instruction, and Petitioner cannot establish the requisite prejudice necessary for a grant of post-conviction relief.

Accordingly, the post-conviction relief court properly denied relief. This Court should deny certiorari.

Petitioner, like all other defendants, had a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner had the burden of proving the allegations in his post-conviction relief action, and when alleging counsel was constitutionally ineffective, he needed to prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Petitioner must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, Strickland requires the applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. The function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance required of a criminal defense attorney." Id. at 690. Although courts may not indulge "post hoc rationalization" for counsel's decision-making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for actions. There is a "strong presumption" counsel's attention to certain issues to the exclusion of others reflects tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules

of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversarial process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, opposing counsel, and the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86. “In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing Strickland, 466 U.S. at 695-96

(explaining the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

Like in the instant case, cases where an applicant asserts that trial counsel was ineffective for failing to properly object to a jury instruction, the same two-pronged standard as set forth in Strickland and its progeny applies. See Campbell v. State, 441 S.C.361, 893 S. E.2d 492 (Ct. App. 2023) (employing the two-pronged Strickland standard requiring the applicant to establish both deficiency of counsel and prejudice when asserting a claim of ineffective assistance of counsel for failing to object to a jury instruction on mutual combat alongside self- defense). Here, Petitioner did not and could not meet his burden of proof as to either deficiency or prejudice and, accordingly, the post-conviction relief court properly rejected this claim and denied relief.

As an initial matter, Petitioner's argument that his conduct did not amount to lethal force is not supported by the record. As detailed above, Petitioner used a knife to stab Victim multiple times all over his body, including in his abdomen near major organs. Multiple first responders who arrived on scene testified extensively about the nature of Victim's wounds, including an "overwhelm[ing]. . . amount of blood" and the "severity of the wounds to the victim." (App. 208-09). The emergency medical technician who arrived on the scene thought that some of the stab wounds were so severe and possibly life threatening enough to be transported to a Level I trauma center equipped to handle "severe slashing and stabbing wounds, wounds of that nature" rather than the nearest medical center. (App. 130-139). Petitioner's argument seems to be premised on the faulty belief that because Petitioner did not kill Victim, his force was non-lethal. The ultimate outcome of Petitioner's conduct determined the charged offense (i.e., because Victim received immediate medical treatment and did not succumb to his multiple severe stab wounds, Petitioner was charged with assault and battery of a high and aggravated nature and not murder) but has no

bearing on the type of force that Petitioner used. Repeatedly stabbing someone with a knife is a use of lethal force. Petitioner's assertion that the facts of his case did not include fatal, lethal, or deadly force are not supported by the record.

At the heart of Petitioner's claim is the assertion that the trial court's instruction on self-defense was erroneous because it did not fit the facts of his case. During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). Conversely, a trial judge should not present a jury instruction "which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). As discussed above, the facts of Petitioner's case establish that lethal or deadly force was used, regardless of the ultimate outcome.

Moreover, the trial court's instruction was legally correct based on the facts of Petitioner's case. The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge must charge only the current and correct law of South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the

case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”). Here, as the post-conviction relief court correctly found, the trial court’s jury instruction on self-defense, when read in its entirety, “demonstrates a proper jury instruction about self-defense. (App. 397). Because the jury instruction was a proper statement of law and appropriate based on the facts of Petitioner’s case, Petitioner cannot establish any deficiency of counsel for failure to object to the jury instruction or failure to request specific verbiage “tailored to the facts” of Petitioner’s case.

Additionally, because the jury instruction was proper based on the law and facts of Petitioner’s case, Petitioner cannot establish that the result of his trial would have been different but for counsel’s failure to object to the self-defense instruction. Petitioner’s assertions that the jury was confused or mislead because the instruction contained references to lethal or deadly force (or similar verbiage such as deadly blow) is illogical when, as the post-conviction relief court aptly noted, “[T]he victim testified before the jury, and they knew there was no fatal blow.” (App. 397).

The post-conviction relief court properly denied relief and this Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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