STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

CERTIORARI TO CLARENDON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2012-213670

RAPHAEL BRIGGS, ... PETITIONER,

v.

STATE OF SOUTH CAROLINA, ...RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

QUESTION PRESENTED

Does evidence support the trial court's finding that counsel was not ineffective in not requesting a charge of involuntary manslaughter?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Petitioner was indicted for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2006-GS-14-0076). Petitioner was represented by Harry Devoe, Esquire ("Counsel"). Petitioner proceeded to a jury trial on March 20-21, 2006, and was found guilty. Petitioner was sentenced by the Honorable John M. Milling to thirty-seven (37) years imprisonment for Murder and to a concurrent term of five (5) years for Possession of a Firearm During Commission of a Violent Crime.

A Notice of Appeal was filed and an appeal perfected. Following the submission of briefs, the conviction and sentence were affirmed. State v. Briggs, Op. No. 2008-UP-515 (S.C. Ct. App. filed Sept. 8, 2008). The remittitur was sent on September 24, 2008.

Petitioner filed his application for post-conviction relief on January 13, 2009. A hearing was held on October 27, 2010, at which Petitioner was present and represented by counsel. The Honorable W. Jeffrey Young denied and dismissed the application with prejudice in an order dated December 11, 2012, and filed December 18, 2012.

A Petition for Writ of Certiorari followed. The State moved to remand the matter to the Circuit Court for a motion pursuant to Rule 60, SCRCP, as the issue raised in the Petition had been raised by Petitioner at trial, but not ruled upon by the PCR court. (Supp. App. pp. 20-31.) This Court granted leave, and an Amended Order of Dismissal was signed by Judge Young on February 8, 2014, and filed February 20, 2014. (Supp. App. pp. 1-13.)

ARGUMENT

Counsel was not deficient in failing to request a jury charge on involuntary manslaughter as the evidence did not support the charge.

It was undisputed at trial that on September 5, 2005, Wesley House died from a single shotgun blast to his abdomen at contact range, meaning the muzzle was against his skin, and Petitioner held the shotgun. (App. p. 94, lines 1-14; p. 95, lines 9-13.) Earlier that day, between noon and 1:00 pm, Petitioner and House were at Katie Green's trailer near Summerton in Clarendon County. (App. p. 79, lines 3-9; p. 84, lines 3-23.) There had been a confrontation between the two because someone had come to the house to purchase crack cocaine and wanted to speak to Petitioner and not House. (App. p. 79, lines 12-20; p. 125, line 12 – p. 126, line 2.) House was angered and grappled with Petitioner, pinning him against a wall and taking a vial of crack cocaine that Petitioner intended to sell. (App. p. 79, line 20 – p. 80, line 7; p. 126, lines 2-18; p. 143, lines 8-19.) Petitioner stated initially he was laughing, thinking House was "playing," but Petitioner also acknowledged that he "was mad at first." (App. p. 126, lines 5-14; p. 142, lines 20-23; p. 144, lines 1-15.) Petitioner then left from Green's home when his girlfriend arrived in a car to pick him up. (App. p. 127, lines 5-18.)

According to Petitioner, he took his girlfriend to work. (App. p. 127, lines 17-24.) He then purchased more crack cocaine and returned to Green's trailer to stash the crack cocaine in an inoperable automobile he owned located on the property. (App. p. 149, line 21 – p. 151, line 4; p. 164, line 12 – p. 165, line 10.) He then went to the mall in Sumter with Green's grandson, Sherod Mack, who lived with Green at the time. (App. p. 80, line 15; p. 128, lines 1-11.) There he had his jewelry cleaned and bought shoes for his children. (App. p. 128, lines 13-21.) At some point in the afternoon Petitioner passed Green's trailer, and House was outside. Petitioner

recalled that House claimed Petitioner had tried to run him over at some point that day. (App. p. 131, lines 3-5; App. p. 147, lines 2-3 and lines 19-24; p. 149, line 6 – p. 151, line 6.)

Petitioner returned to Green's trailer around 7:30 pm with Mack. (App. p. 80, line 16; p. 81, lines 9-11; 159, line 7; p. 159, line 25 – p. 160, line 1; p. 160, line 17 – p. 161, line 16.) Petitioner was near his car alongside the road when House approached him, saying "what's up?" (App. p. 50, lines 18-21; p. 51, lines 12-17; p. 52, lines 16-17; p. 71, lines 4-15; p. 73, lines 9-15; p. 162, lines 5-14.) House's cousin, Dominique Lawson, who was flipping meat on the grill, saw the encounter and denied that House had a weapon when he approached Petitioner. (App. p. 48, line 22 – p. 49, line 16; p. 53, line 1 – p. 54, line 20; p 59, lines 12-25; p. 61, lines 19-20; p. 62, lines 13-17; p. 73, lines 15-17.) Law enforcement stated that no other witness interviewed saw House with a weapon. (App. p. 83, lines 15-24.) Green stated House was known to have a red bat or stick, but she was not outside when the incident occurred. (App. p. 117, line 20 – p. 118, line 5.) Petitioner claimed House was standing near the stop sign when he pulled up and approached Petitioner with a gray stick emblazoned with the words "big shot." (App. p. 130, lines 9 – 24; p. 133, lines 4-17; p. 162, lines 5-18.) As House approached aggressively, Petitioner popped the trunk from the driver's side door and retrieved the already loaded shotgun. (App. p. 51, lines 18-24; p. 54, line 2 – p. 56, line 12; p. 134, line 1 - p. 135, line 17; p. 153, line 15 – p. 155, line 1; p. 74, lines 1-12; p. 162, lines 13-22.) Lawson believed Petitioner pulled the trigger and said, "F[---] you," before leaving the scene. (App. p. 51, lines 18-20; p. 52, lines 1-3; p. 56, lines 10-17; p. 61, lines 23-24.) As noted by the PCR court, Petitioner variously described the fatal moment:

(1) App. p. 87, lines 22-24:[1]

[1] Counsel continued cross-examining the officer, asking whether Petitioner had said that House "said he had nothing to live for. 'The girl was cheating on me,' I don't give a damn.'" The officer answered negatively, but Counsel implied that Petitioner may have stated this during his statement though the officer did not recall it. (App. p. 87, line 25 – p. 88, line 17.)

Q. --- in this case. You testified that [Petitioner] said that [House] ran to the gun.
A. That's what he told me.

(2) App. p. 136, line 16 – p. 137, line 19:

Q. Well when the gun -- Did you mean to pull the trigger?
A. No, sir.
Solicitor: Object to leading.
Q: If you hadn't pulled the trigger what would you have done?
A: I don't know what I would have done.
Q: Was he still coming towards you?
A: Yes, sir.
Q: Did you think you were using the gun as a club rather than as a gun?
A: Say again?
Mr. Cothran [solicitor]: Your honor, I request he not lead him.
The court: Sustained.
Q. Well if you hadn't used the gun what would you have done?
A. I don't know what I would have done. I can't answer that.
Q. All right.
A. I don't know what I would have done.
...
A. No, why would I say something? I mean, he didn't say nothing to me, so. I was scared too. All he did is jump up and acted fool. So I just jumped in the car and ran....

(3) App. p. p. 157, lines 1-15:

Q: ...And you go back and pull the gun out and you stick it in his chest. And he's defying you to shoot him, right?
A: Nah, I didn't stick it into his chest. He walked into the gun.
Q: He just walked into it, and you pulled the trigger.
A: He walked into the gun and the gun went off.
Q: So when he's walking to the gun you're just standing there with it.
A: I just pulled it out. As soon as I pulled it out, he was close to me. He was walking up on it. As soon as I whip it out, that's when he – he was still close enough, close enough for him to walk on –
Q: Okay. Where was --
A: And, you know, and told him to back up. I didn't know it was going to go off.

(4) App. p. 158, lines 3-5:

Q: And so you pulled the trigger?
A: It went off. Yeah, I didn't, you know, I don't know how it happened. It happened so quick.

(5) App. p. 162, line 23 – p. 163, line 8:

Q: So you stick the gun in his chest and pull the trigger?
A: No, he walked to the gun. I did not move. I didn't move at all. He walked to the gun.
Q: So you're saying you're sitting there holding the gun on him –
A: He walked towards it.
Q: --And he walks right into the gun –
A: He walked right into it.
Q: -- And you pulled the trigger?
A: Yes, sir.

Following the fatal shot, Petitioner put the shotgun back into the trunk and drove away. The stick Petitioner described House accosting him with was also found in Petitioner's trunk. (App. p. 138, lines 7-10.) However, Petitioner claimed he did not know how the stick came to be there. (App. p. 138, line 7 – p. 140, line 4.) Another individual disposed of the shotgun and stick. (App. p. 81, line 16 – p. 82, line 7; p. 140, line 20 – p. 141, line 2; p. 158, lines 16-19.) Petitioner maintained that he was afraid and defending himself when he retrieved the weapon. (App. p. 135, lines 5-9; p. 136, lines 2-3; p. 141, lines 3-7.)

In State v. Burriss, 334 S.C. 256, 264-265, 513 S.E.2d 104, 109 (1999):

> Involuntary manslaughter is defined as either (1) the killing of another without malice and unintentionally, but while one is engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the killing of another without malice and unintentionally, but while one is acting lawfully with reckless disregard of the safety of others.

If not engaged in self-defense, Petitioner's pointing and presenting a firearm does not fall under part (1) of the definition. State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006) (charge of involuntary manslaughter not warranted where defendant was pointing or presenting a firearm, a felony). Here, part (2) of the definition is relevant as Petitioner claimed to be holding a weapon lawfully in self-defense.[2] The State submits that the PCR court correctly found that Petitioner

[2] As noted by the PCR court, Part (1) of the definition would be inapplicable here. If Petitioner were unlawfully presenting a firearm, such activity would naturally tend to produce death or harm. State v. Reese, 370 S.C. 31, 633

was not lawfully armed in self-defense. Self-defense requires: (1) the defendant must be without fault in bringing on the difficulty, (2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or was actually in such danger, (3) a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, and (4) the accused had no other probably means of avoiding the danger of losing his life or sustaining serious bodily injury other than to act as he did. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Petitioner acknowledged that he could just as easily have gotten into his car and left Green's residence when House approached. (App. p. 153, line 25 – p. 155, line 1.) Therefore, Petitioner clearly could have easily avoided any danger of losing his life.

The PCR court also correctly found that, even if Petitioner was lawfully armed in self-defense, there was no evidence to support a charge of involuntary manslaughter. Petitioner's testimony allowed for two possible scenarios if it is believed that he lawfully drew his weapon in self-defense: (1) Petitioner pulled the trigger purposefully or (2) House, not Petitioner, caused the weapon to discharge when House ran headlong into the weapon. If Petitioner pulled the trigger intentionally, he is not entitled to a charge on involuntary manslaughter. Sullivan v. State, 407 S.C. 241, 754 S.E.2d 885 (Ct. App. 2014). In the second scenario, the discharge was caused by House's actions, not Petitioner's. This scenario is distinguishable from Light v. State, 378 S.C. 641, 664 S.E.2d 465 (2008) (defendant entitled to involuntary manslaughter where he was lawfully armed in self-defense because he took the gun from the victim who was allegedly threatening him with it and there was evidence defendant recklessly handled the gun since the gun fired almost immediately after defendant took possession) and State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999) (defendant entitled to charge on involuntary manslaughter where

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S.E.2d 898 (2006) (charge of involuntary manslaughter not warranted where defendant was pointing or presenting a firearm, a felony).

lawfully armed in self-defense and snatched gun up with shaking hands, resulting in an accidental discharge). Here, in Petitioner's version of events, there was no struggle for a weapon. In Petitioner's version, it was House's recklessness, not his own, which caused House's death. If believed, Petitioner merely stood motionless, armed in self-defense, when he was accosted by House. Here, if believed, there is no evidence that Petitioner did not act unintentionally; he states that did not act at all. House's actions in ramming the weapon caused the discharge. Here, Petitioner either pulled the trigger intentionally, or House's own actions, not Petitioner's, caused the gun to fire.

Based on all the foregoing, because there is no evidence to support a charge of involuntary manslaughter, Counsel's failure to request such a charge does not constitute ineffective assistance of counsel. Harris v. State, 354 S.C. 382, 581 S.E.2d 154 (2003)(counsel not ineffective in failing to request an involuntary manslaughter charge because evidence did not warrant such a charge).

CONCLUSION

For the reasons stated above, this Court should affirm the PCR Court's Order and deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By:
ATTORNEYS FOR PETITIONER

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

May 2, 2014

STATE OF SOUTH CAROLINA
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Certiorari to Clarendon County
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RAPHAEL BRIGGS,

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THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Appellate Defender Wanda H. Carter
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 2nd day of May, 2014

CAROLINE KAISER
LEGAL ASSISTANT

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAY 02 2014
S.C. Supreme Court

May 2, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: **Raphael Briggs v. State of South Carolina**
Lower Court Case No: 2009-CP-14-0023
Appellate Case No. 2012-213670

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Mary S. Williams
Assistant Attorney General
SC Bar No. 76192

MSW/ck
Enclosures

cc: Appellate Defender Wanda H. Carter
Trisha Allen. Victim Services