ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

DEC 11 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MANUEL ANTONIO MARIN,

PETITIONER

APPELLATE CASE NO. 2013-002001

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether petitioner was entitled to a jury charge on a correct statement of law fitting the facts of this self-defense case: that one acting in self-defense has the right to continue shooting until it was apparent that the danger of death or serious bodily injury had ended?

STATEMENT

Procedural History

Petitioner was indicted by the Spartanburg County Grand Jury for the offenses of murder and possession of a weapon during a violent crime. His case was called to trial on October 25, 2010 before the Honorable J. Derham Cole, and a jury. Tanya Jones represented petitioner. Jennifer Jordan and Susan Reese were the assistant solicitors. R. 1

On October 27, 2010, the jury found petitioner guilty on both counts. R. 343, l. 25 – 344, l. 3. Judge Cole sentenced petitioner to life imprisonment for murder. R. 346, ll. 1-6. Petitioner filed a timely appeal with the Court of Appeals.

On February 5, 2013, a panel consisting of Chief Judge Few, Judge Geathers, and Judge Lockemy heard oral argument in this case. On July 3, 2013, the Court of Appeals affirmed petitioner's convictions in a published opinion authored by Chief Judge Few. App. 1. State v. Marin, 404 S.C. 615, 745 S.E.2d 148 (Ct. App. 2013). Petitioner filed a timely petition for rehearing which was denied on August 22, 2013. App. 15.

The denial of the petition for rehearing was not unanimous. App. 15. Judge Lockemy voted to grant rehearing. App. 15. On October 23, 2014, this Court granted certiorari and this brief of petitioner follows.

ARGUMENT

Petitioner was entitled to a jury charge on a correct statement of law fitting the facts of this self-defense case: that one acting in self-defense has the right to continue shooting until it was apparent that the danger of death or serious bodily injury had ended.

Introduction

In a case with no motive and no real explanation other than self-defense, the state's hurdle was proving malice. Petitioner took the stand and testified he was forced to shoot the drunken decedent in self-defense when he tried to grab petitioner's steering wheel and wreck the car. The decedent's blood alcohol level was 0.323. R. 173, ll. 22-25. After the shooting, petitioner found a public place in downtown Spartanburg, parked, and waited for the police to arrive.

The state never argued that petitioner intended to rob the decedent. The state never argued that prior bad blood existed between petitioner and the decedent. No drugs, other than the decedent's excessive alcohol consumption, played any role in this crime. The state's only argument that malice existed in this case was that petitioner fired two shots instead of one. Multiple times in her closing argument, the solicitor linked malice with the fact that two shots were fired. The jury returned during deliberations and asked again for the definition of malice. Had the trial judge not refused petitioner's requested charge that a person acting in self-defense can continue shooting, the state could not have persuaded the jury that malice existed.

Relevant Facts

This shooting happened after petitioner attempted to give the highly intoxicated decedent, Nelson Tabares ("Tabares") a ride home from a bar. Late on the night of July 20, 2008, Tabares was at Bongos Nightclub in Greenville, South Carolina. R. 12, l. 13 – 14, l. 18. A bouncer at Bongos, Christopher McDonald ("McDonald"), acknowledged the bar staff had to "cut [Tabares]

off." R. 20, ll. 15 – 16. The bouncer observed that the decedent was "just pretty much stumbling everywhere" and "couldn't really stand up." R. 20, ll. 19 – 22. The pathologist diagnosed Tabares's condition at a blood alcohol level of 0.323 as "knee-walking drunk." R. 173, ll. 8 – 13. The pathologist testified that he had seen someone die from an alcohol overdose with a blood alcohol level of 0.270. R. 237, ll. 11 – 18.

Three men—bouncer McDonald; the bar's owner, Larry Rodriguez ("Rodriguez"); and petitioner—took Tabares into the "back kitchen" where he stayed for over an hour. R. 21, ll. 5 – 24. Rodriguez had known Tabares for a long time and noticed he was not feeling well that night. Rodriguez would be the only witness to testify Tabares was not extremely intoxicated, speculating, "He was just not feeling good." R. 13, l. 21 – 14, l. 18.

McDonald and Rodriguez were looking for someone to give the decedent a ride when petitioner offered to take him home. R. 22, l. 11 – 23, l. 10. Petitioner knew where Tabares lived. R. 22, l. 11 – 23, l. 10. McDonald remembered that he "basically carried [Tabares] out and actually put him in [petitioner's] truck." Petitioner reached for his laptop and typed in Tabares' address -- apparently on the GPS -- that went with his laptop. R. 22, l. 11 – 24, l. 22. Tabares was "kinda like in and out" but "knew where he was at." R. 29, ll. 12-17.

It was undisputed that petitioner drove, and that his friend Alfredo Jimenez ("Jimenez") (petitioner's former brother-in-law) rode in the front seat. Tabares was placed in the backseat of petitioner's SUV. R. 243, l. 21 – 244, l. 6.

Larry Gory was apparently coming home from "personal business" early that morning when he came upon petitioner and Jimenez standing beside the road. R. 41, ll. 16 – 24. R. 44, ll. 3 – 22. Gory said it appeared they were trying to "pull something away from each other . . . one of the guys said could [you] call the police, he just – he shot him." R. 41, ll. 3-24.

Spartanburg Police Officer Jeffery Powell ("Powell") testified he arrived on the scene at about 4:05 a.m. and he recalled seeing petitioner and Jimenez. R. 49, ll. 15 – 21. Powell testified: "One of them [was] sitting in the intersection and one standing in the intersection of Daniel Morgan Avenue and West Main Street." R. 49, ll. 17 – 21. He recalled that one of the men was very calm and the other was very upset. R. 49, l. 17 – 50, l. 13. Powell saw a weapon lying on the sidewalk and he picked it up and put it in his trunk. R. 51, l. 15 – 52, l. 7.

Powell remembered: "I asked him where it happened at, and he would just say Wal-Mart. He did say Wal-Mart . . . he said that the other individual [Tabares] was grabbing a hold of the steering wheel" and he was trying to wreck petitioner's SUV. R. 56, ll. 9-18. Jimenez told Powell that they had left a club in Greenville and were supposed to be taking Tabares home. When they apparently passed what Tabares thought was "his road," he "got very upset and was trying to, to get them to stop the car, and the driver wouldn't stop. He said he just wouldn't stop. And he said that was when he started fighting with the driver." R. 59, ll. 2-21. Jimenez never testified, and it was unclear from the record in this case if he disappeared prior to trial or why he was not called as a witness.

Petitioner later testified in his own defense. Petitioner was the marketing director for a newspaper, and he recalled the events of July 20, 2008. R. 225, ll. 4-10. Petitioner went to the Colombian Festival that evening and afterwards made his way to Bongos. R. 225, l. 8 – 226, l. 20. Petitioner was mingling with Jimenez when Rodriguez asked him to give Tabares a ride home "and I agreed." R. 227, l. 5 – 228, l. 9.

Petitioner remembered one of the bouncers gave him Tabares' driver's license "and I put the address on my laptop." The laptop included a GPS. R. 230, l. 12 – 231, l. 20. The police confirmed that Tabares' address had been entered into the computer. R. 147, ll. 11 – 14.

Petitioner recalled as they were driving he was talking with Jimenez "about the three Americans that had been liberated that past week, I mean, yeah, the past week, and the presidential candidate that [was] kidnapped in Colombia." R. 231, l. 23 – 232, l. 6.

While he was talking with Jimenez, Tabares jumped up from the backseat and put petitioner in a headlock: "I hit the brakes. I hit the brakes, and the car went on the oncoming lane. And it was headed towards a telephone pole. But I got the car back on the road." R. 232, l. 11 – 233, l. 12.

Petitioner said he was very scared after he almost hit the telephone pole, and "at that point . . . I decided not to take him home. I was just trying to find a public place, you know, people where I could, you know, possibly jump out of the car and get some help . . ." R. 234, ll. 8-14. Petitioner testified that given the hour "nothing seemed to be open . . . all of a sudden, you know, Mr. Tabares jumps up and grabs the steering wheel and he tries to run the car off the road . . . I kept pushing him, pushing him back . . . ." Petitioner said Tabares continued coming after him, and "I grabbed the glove box and opened the glove box and got the pouch out which I had the gun in it . . . I pulled the gun out and I shot Mr. Tabares." R. 234, l. 5 – 236, l. 11.

The forensic evidence corroborated petitioner's version of events. A City of Greer police officer confirmed that there were fresh skid marks in the road where Jimenez said the incident occurred. R. 77, ll. 16 – 25. Also in the road were "particles of debris that appeared to be consistent with the vehicle's condition that had had some damage to the front end." R. 77, ll. 16 – 25. The front bumper of the car was missing. R. 125, ll. 1 – 4. Gunshot residue was found on the palm and the back of Tabares' hands. R. 178, ll. 16 - 25. The crime scene investigator found Tabares' torso between the front seats on the center console with his upper body in the front of the car. R. 127, ll. 8 – 21. All of the blood spatter was in the front of the car with none in the back. R. 127, l. 22 – 128, l. 6.

After the shooting, petitioner said Tabares fell on his knee and "I was terrified. I was really shocked." R. 237, ll. 2 – 4. Petitioner continued to look for a public place where he could stop the car and ended up in downtown Spartanburg. R. 236, l. 2 – 237, l. 18.

Petitioner testified that Jimenez was also in shock when the men got out of the car. R. 238, ll. 1 – 3. They were both talking "fairly loud": "[W]hy was he trying to kill me? Why was he trying to run us off the road?" R. 238, ll. 6 – 9. Petitioner said Jimenez "grabbed the gun, and I let him have it." Petitioner did not recall where Jimenez put the gun. R. 238, ll. 1-21. However, as seen above, the gun was found nearby by the police officer and placed in his trunk. Petitioner testified, "I sat down and waited for the police to come . . . I sat down on the median." R. 239, ll. 7-20.

On cross-examination, petitioner explained to the solicitor that it was very dark as he was driving that night and he was trying to keep the decedent from "killing us" by wrecking his SUV. R. 248, l. 1 – 251, l. 4. When the solicitor asked petitioner on cross-examination why there were *two shots* fired, petitioner answered: "It just happened within seconds." R. 250, l. 22 – 252, l. 16.

<u>The Defense's Request to Charge</u>

Defense counsel requested and the trial court agreed to charge self-defense. R. 259, l. 13 – 260, l. 9. R. 263, ll. 19 – 21. Then, during her closing, the solicitor made the highly inflammatory argument that the jury could infer malice because two shots were fired. The solicitor said, "Ladies and gentlemen, I submit this is malice. Two shots, not one, two shots to the back of the head. One of them tight contact, barrel up against the head." R. 298, ll. 22 – 24. The solicitor also argued, "So when you shoot somebody in the head and they stop struggling with you, if that's what they're doing, you don't have—you won't shoot them a second time unless you pull that trigger a second

time." R. 293, ll. 15 – 22. The solicitor said, "Would a reasonable person shoot someone twice in the back of the head?" R. 301, ll. 2 – 3.

When the trial court asked for exceptions after his charge, defense counsel stated he wanted an instruction that:

> [I]f the defendant is justified in defending himself or others in firing the first shot, then the defendant—also continue—to continue shooting until it is apparent that the danger of death or serious bodily injury has been completed—has completely ended.

R. 332, ll. 6 – 12. For this proposition of law, defense counsel cited State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). R. 332, ll. 11 – 12. The trial judge responded that the proposed charge "sounds like a comment on the facts to me." R. 332, ll, 13 – 14. After argument, Judge Cole declined to give petitioner's requested charge. R. 332, l. 15 – 336, l. 1.

The jury then requested additional instruction on the defintions of malice and voluntary manslaughter. R. 336, ll. 16 – 19. The trial judge repeated his malice charge. R. 336, l. 21 – 338, l. 23. Following the jury's confusion about malice and the additional charge, appellant again asked for the "continuing to shoot" charge, this time citing Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998) and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). R. 341, l. 14 – 342, l. 11. The trial judge again refused to give the charge. R. 342, l. 12 – 343, l. 2. Approximately an hour later, the jurors returned with a verdict finding appellant guilty of murder. R. 343, l. 12 – 344, l. 5.

The Court of Appeals' Decision

The Court of Appeals inconsistently held that: (1) the requested charge was not a correct statement of the law, and (2) that the requested charge had been sufficiently covered by the trial judge's charge. Compare App. 4 ("We are concerned the charge [petitioner] requested is not a correct statement of law.") with App. 6 ("Considered as a whole, the trial court's charge explained this principle of law."). With respect to its first inconsistent holding, the court stated that if

requested charge were correct, then defendants could continue to shoot "so long as the initial danger has not '*completely* ended.'" App. 4 (emphasis in original). With respect to its second inconsistent holding, the court held that petitioner's requested charge "derives from the correct principle of law that, if no other element has been disproven, any particular act of deadly force done in self-defense is justified if the act was reasonably necessary to prevent death or serious bodily injury, under the circumstances as they existed at the time of the act." App. 6. From this late recognition that petitioner's requested charge was a correct statement of the law, the court concluded the requested charge was subsumed within the "may use such force is reasonably necessary" charge given by the trial court. App. 6-7.

Discussion

If the Court of Appeals' reasoning is allowed to stand, it will mean that specific charges on principles of self-defense are unnecessary. Its decision contradicts this Court's longstanding precedent that a trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As this Court recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller at 443, 377 S.E.2d at 330.

A deep understanding of this Court's decision in Fuller demonstrates the Court of Appeals' error. In Fuller, the defendant was black. Id. at 441, 377 S.E.2d at 329. He solicited a white prostitute. Id. The prostitute took him to her trailer for sex, but the trailer was occupied and the defendant left. Id.

The defendant later returned to the prostitute's trailer and a car driven by a white woman was blocking the road. Id. The defendant asked her to move her car. Id. At this point, two men

approached the defendant's car and asked him "what he was 'trying to do to that white lady.'" Id. One of the men used a racial slur and grabbed the defendant by the throat. Id. at 441, 377 S.E.2d at 329-30.

The defendant fired a warning shot which temporarily allowed him to drive away, but the street was a dead end. Id. at 442, 377 S.E.2d at 330. The two assailants tried to block the defendant's car from leaving and the defendant ultimately crashed and pinned his car against a steel rail. Id. The two men yelled, "'we're going to take care of you.'" Id. The defendant thought he saw something shiny in one of the men's hands and fired four shots at them, killing them both. Id. No gun was found on the assailants. Id.

Relying on State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984), the trial judge in Fuller only instructed the jury on the basic elements of self-defense. Id. This Court held it was error to only give the general charge from Davis when the defendant "repeatedly requested additional charges." Id. at 443, 377 S.E.2d at 330. The trial judge erred by not giving three specific charges on self-defense that further explained the principles in the general charge. First, the trial judge failed to charge the jury that a defendant has the right to act on appearances from State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). Id. at 443-44, 377 S.E.2d at 330-31. Second, the trial judge failed to charge the jury that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense" from State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). Id. Finally, the trial judge failed to charge that an individual has no duty to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury" from State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920). Id. For each of these charges, this Court explained the specific facts necessitating the additional, illuminating instruction.

If the Court of Appeals' reasoning from petitioner's case were applied to Fuller, the case would not have been reversed. Under the Court of Appeals' analysis, general principles of self-defense are sufficient and further contextual charges are not required. The court believed that the general phrase "such force as is reasonably necessary" was sufficient in this case. App. 6. But if this phrase was sufficient, then the trial court's general charge in Fuller that a defendant who believed he was in imminent danger of losing his life could legitimately defend himself would have eliminated the need for the specific charges of acting on appearances or "words accompanied by acts." This Court held the specific charge was required. If the Court of Appeals' reasoning is correct here, then the Fuller trial court's general charge that the "defendant had no other probable means of avoiding the danger" would have eliminated the need for the specific charge that a defendant need not retreat if it increases the danger to himself. This Court held the specific charge was required. When the Court of Appeals' reasoning in this case is compared to this Court's holding in Fuller, it clearly stands in opposition to this Court's self-defense jurisprudence.

Here, the proper jury instruction petitioner wanted was similar in content – although a different principle – to the ones improperly refused in Fuller. The language requested by petitioner comes directly from this Court's decision in State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978).[1] In Hendrix, the Court specifically held that "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body

[1] The Court of Appeals initially stated that petitioner's requested instruction was not a correct statement of law, but Hendrix shows this to be incorrect. Other states impose even more stringent requirements on the prosecution when dealing with the question of multiple shots. In Illinois, "When it has been determined that a defendant was initially shooting in self-defense, the State must then prove that a sufficient amount of time had passed between the initial shot and any subsequent shots which would have allowed the defendant, as a reasonable person, to realize that no further shooting was necessary." People v. Guzman, 567 N.E.2d 500, 504 (Ill. App. Ct. 1990).

has ceased." Id. This Court rejected the State's argument that Hendrix used excessive force by firing four times. Id.

The "continuing to shoot" charge was required by the facts of this case, especially after the jury's question about malice was provoked by the solicitor's argument. The solicitor was urging upon the jury the incorrect sophomoric idea that you never have to shoot more than once to defend yourself. Self-defense is not an algebra problem and a defendant has the right to have the jury understand that. It was an elementary request on the law that once a defendant *properly fires in self-defense he can continue firing* until the danger is removed.

On cross-examination, petitioner explained to the solicitor that it was very dark that night and he was trying to keep the decedent from "killing us" by wrecking his vehicle. R. 248, l. 1 – 251, l. 4. When the solicitor asked petitioner on cross-examination why there were *two shots* fired, petitioner answered: "It just happened within seconds." R. 250, l. 22 – 252, l. 16.

The lack of any motive in this case and the solicitor's inflammatory closing argument highlights the necessity of the jury understanding this legal principle. The state had no argument on the element of malice other than the fact that two shots were fired. The solicitor repeatedly referenced the fact that two shots were fired. The solicitor said, "So when you shoot somebody in the head and they stop struggling with you, if that's what they're doing, you don't have—you won't shoot them a second time unless you pull that trigger a second time." R. 293, ll. 15 – 22. The solicitor argued, "Would a reasonable person shoot someone twice in the back of the head?" R. 301, ll. 2 – 3. The solicitor said, "**Ladies and gentlemen, I submit this is malice. Two shots, not one, two shots to the back of the head.** One of them tight contact, barrel up against the head." R. 298, ll. 22 – 24 (emphasis added). The solicitor continued, emphasizing the amount of force needed to pull the trigger and telling the jury that force was "used twice" and that petitioner had to "pull the

slide back and he has to fire it twice." R. 299, ll. 2 – 13. She argued that malice aforethought could "be present in an instant." R. 299, ll. 5 – 8. Then, after trying to distinguish murder from manslaughter, she told the jury, "**So the question is is this malice.**" R. 299, ll. 14 – 25 (emphasis added).

In many ways, the solicitor's extremely prejudicial argument that the jury could infer malice because two shots were fired mirrors the error of inferring malice from the use of a deadly weapon when mitigating circumstances exist. State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). In Belcher, this Court recognized the dangers inherent in allowing a jury to infer malice. Id. at 609-10, 685 S.E.2d at 808-09. Belcher recognized that such inferences can lead a jury to an incorrect verdict when the inference of malice is allowed to override the state's burden of disproving self-defense or proving malice beyond a reasonable doubt. Id. Just like a Belcher error, the state in this case invited the jury to infer malice from multiple shots. Similar to Belcher, the error from the invited inference explains the jury's verdict where the state had no theory of motive or malice other than the firing of two shots.

Once the jury requested the definition of "malice," the need for petitioner's requested charge became indispensable. See State v. Blassingame, 271 S.C. 44, 46-47, 244 S.E.2d 528, 530 (1978) In Blassingame, the jury requested additional instruction on the definitions of murder and manslaughter. Id. The trial court erred in how it defined the intent element of manslaughter, which necessarily involved a distinction from malice. Id. This Court found, "It is reasonable to assume that the jury had, at this point, focused critical attention on the meaning of these two offenses and was in the process of deciding upon its verdict based upon one or the other, but wanted to be readvised of the definitions of each." Id. "The additional words which the trial judge would relay to the jury would be given special consideration by the jury since they were in response to its own

inquiry." Id. Just as the jury in Blassingame struggled with malice, petitioner's jury struggled with the solicitor's invitation to infer malice from the firing of two shots. Had the trial judge correctly explained self-defense, the outcome of the case would likely have been different.

The Court of Appeals also incorrectly dissected the requested charge in order to give it an illogical meaning. App. at 4-5. The court improperly singled out the phrase "completely ended" from the remainder of the charge. The requested charge makes clear that what must "completely end" is the "danger of death or serious bodily injury." This statement of the law is correct. Hendrix at 661, 244 S.E.2d at 507. The court erred in taking this language out of context to produce the extreme result that a defendant would be justified in continuing to shoot if a "minimal danger" existed. "Minimal danger" was never the petitioner's argument. The danger to be defended against was death or serious bodily injury.

In Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-10 (1998), the Supreme Court noted the judge had charged that if the defendant was justified in firing the first shot he was justified in continuing to shoot until any danger to his life and body had ceased. The jury here likewise had a right and a need to know that firing more than one shot was not excessive force and that it did not remove a legitimate case of self-defense. Id.

In a self-defense case in New York, the defendant admitted first shooting the decedent in the face and then firing several more times after the decedent had fallen. People v. Patterson, 250 N.Y.S.2d 715, 719-20 (App. Div. 1964). The decedent was a landlord who brought his rifle to the defendant/tenant's apartment after a night of drinking ended with a dispute over rent. Id. at 717-18. Much like this case, the prosecution relied mainly on the number of shots fired. The court cited New York's self-defense law which holds that "a person subjected to a felonious assault in his abode is not expected to engage in a detached analysis of the probabilities, and may destroy the

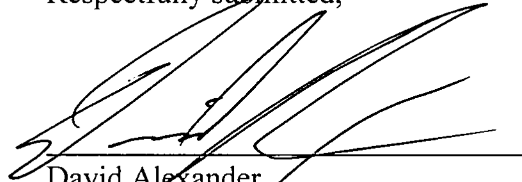
person making the felonious attack." Id. at 722 (internal quotations omitted). The court concluded, "This is not the stuff upon which a man's liberty should be taken from him." Id.

Nor should petitioner's liberty be taken from him on the shaky facts of this case when the jury was incorrectly instructed. This was a legitimate case of self-defense. Petitioner's actions were reasonable and consistent with a person acting in self-defense. He waited on the police to arrive. He was in shock and disturbed after the bizarre events that the grossly intoxicated Tabares– with a .323 blood-alcohol reading – had inflicted on him. R. 273, ll. 1-25. Petitioner described how Tabares grabbed him from the backseat and almost caused him to hit a telephone pole after his SUV was forced into oncoming traffic and the forensic evidence corroborated petitioner's testimony. The jury was confused about whether they could infer malice after the state's inflammatory closing argument. Petitioner was entitled to a fair trial with a properly instructed jury on self-defense.

CONCLUSION

For the reasons stated above, the Court should reverse the decision of the Court of Appeals and grant petitioner a new trial.

Respectfully submitted,



David Alexander
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ATTORNEYS FOR PETITIONER.

This 11th day of December, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MANUEL ANTONIO MARIN,

PETITIONER

APPELLATE CASE NO. 2013-002001

CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of December, 2014.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of December, 2014.

Rhonda Deneese Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021