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JAN 28 2015

S.C. SUPREME COURT

TO: Honorable Daniel Shearouse
Clerk of S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RE: Withdrawal of Submitted Petition for
Writ of Certiorari and Disqualification
of Attorney Tripp and S.C. Commission of
Indigent Defense Office.

My name is John J. Moore Jr. and I am the
named Petitioner in the Appellate case 2014-000
786. I've been assigned the Appellate Defender
Benjamin John Tripp of the S.C. Commission of
Indigent Defense and he submitted a Petition for
Writ of Certiorari on my behalf on January
5, 2015. By way of this letter, I motion to have
the Petition for Writ of Certiorari drafted and
submitted by Attorney Tripp on my behalf with-
drawn and I be allowed to submit a pro se
Petition for Writ of Certiorari in its place,
additionally, I move to have Attorney Tripp
and the entire office of the S.C. Commission of
Indigent Defense disqualified from representing

(1)

my interests in any capacity. I offer the following good cause shown in support of this request:

- 1) I filed, argued, and preserved the issue of ineffective assistance of appellate counsel against the S.C. Commission of Indigent Defense, specifically, the attorney named Joseph Savitz, III. I alleged Savitz chose to brief and appeal the weak issue regarding the firearm offense, with a small impact on my sentence of having the consecutive 5 years vacated versus briefing the sleeping juror issue or the pre-trial tainting of the jurors who view mugshots of me or authentication of the recording submitted by the prosecution which are all meritorious viable direct appeal issues. I preserved this ineffective assistance of appellate counsel claim at pcr, an 59(e), and it is preserved in the pcr Court's order. I contacted Attorney Tripp via phone call and several mailings in October and November and he had informed me he had not yet read my record but he would soon before briefing my writ. I made him aware that I'm interested in giving input on preserved issues from the pcr which should be incorporated in the writ and I informed him I have written a draft of these issues I have in mind and would like for him

to review my draft and incorporate my draft in the submitted brief. Attorney Tripp told me to mail him the rough draft of the brief I created and he also told me ultimately what is finally drafted is his and only his final decision. I mailed Attorney Tripp my rough draft of my written rough draft of Writ of Certiorari on October and November 2014. I called Attorney Tripp after he received the rough draft, Attorney Tripp acknowledge to me that he did in fact receive the rough draft and he also informed me that he will not use any of my suggestions nor will he even brief the preserved issues from the PCR. I was dissatisfied but I still hoped that Attorney Tripp would do the proper professional performance. My rough draft consisted of the following issues which are properly preserved for review:

a) Is there any evidence of probative value which supports the PCR Court's conclusion that counsel was not ineffective for failing to request a jury instruction explaining how the jury must evaluate the "use of a vehicle as deadly weapon" in determining the weight of the evidence and the credibility of the witnesses in evaluating each self-defense element previously charged to the jury by the trial judge under the reasonable doubt standard.

b) Is there any evidence of probative value which supports the PCR Court's conclusion that counsel was not ineffective for failing to object and request examination of the jurors or otherwise move for a mistrial on the basis that several jurors fell asleep during the course of the defendant's trial and in doing so compromised the defendant's right to impartial and mentally competent jurors to insure a fair trial.

c) Is there any evidence of probative value which supports the PCR Court's conclusion that counsel was not ineffective for failing to properly investigate and prepare Applicant's case where such failure compromised Applicant's ability to put forth a full defense and have a fair trial.

d) Is there any evidence of probative value which supports the PCR Court's conclusion that counsel was not ineffective for failing to brief the strongest and most meritorious issues challenging the Voluntary Manslaughter conviction versus solely challenging the issue that undermines only the possession of a weapon by a person under the age of 21 conviction.

All the above issues in my rough draft are preserved for appellate review and were addressed by the PCR Court's Order of Dismissal and the 59(e) motion

2) The Petition for Writ of Certiorari submitted by Attorney Tripp on my behalf does not contain any of the proposed preserved issues advocated to Attorney Tripp by way of my rough draft of a writ I mailed to him. In fact, the two (2) issues presented in the Petition for Writ of Certiorari by Attorney Tripp are not listed in the PCR Application nor any of the PCR amendments.

Additionally, the two (2) issues presented in the Petition for Writ by Attorney Tripp were not presented to the PCR Court nor ruled upon by the PCR Court and are therefore not preserved for appellate review. The issue "whether the record supports the PCR Court's finding that trial counsel adequately investigated and presented the defense of self-defense to the jury where counsel completely abandoned presenting any evidence based solely on the stated grounds that he had a "feeling" that his witnesses were not credible and that he wanted to preserve the final argument to the jury," and the issue "whether the PCR Court erred in holding Petitioner did not provide sufficient evidence of an expert's findings to establish prejudice where Petitioner offered the expert's testimony in the form of an affidavit in accordance with the rules of evidence" are not preserved for appellate review. Attorney Tripp made a decision to forego briefing at least four (4) preserved issues, which

brought to his attention in my rough draft, to instead brief two (a) issues which are not preserved at all in this case. The decision of Attorney Tripp is directly influenced by his loyalty to his employer, the S.C. Commission of Indigent Defense, in that Tripp does not want to brief a preserved issue which will potentially result in an ineffective assistance of appellate counsel ruling against his employer and a former colleague, Joseph Savitz, III. Attorney Tripp is laboring under an actual conflict of interest of his employer. This should not be so. It is unfair for Attorney Tripp to not brief a preserved, meritorious, and developed issue of ineffective assistance of appellate counsel and instead brief two (a) unpreserved arguments just to spare his employer from having an ineffective assistance of appellate counsel ruling decided against the employer.

3) Additionally, the issue I briefed in my rough draft on trial counsel's failure to request a jury instruction that Derrick's vehicle is a deadly weapon under the laws of South Carolina is a viable, meritorious, and developed issue which warrants inclusion in the Petition for Writ of Certiorari. Recently, in a case of self-defense, Attorney John O'Leary advanced the argument that a vehicle is a deadly weapon to be

Considered under the law, the same as a loaded
and cocked Firearm (See Exhibit #2). Attorney
O'Leary argument relies heavily on the South Carolina
case laws, State v. Hanchin, 96 S.E. 667 (S.C. 1918)
and State v. Wilds, 584 S.E. 2d 138 (S.C. App. 2003),
and is a grounded, sound law. The fact that Attorney
Tripp forego such an established and well developed
preserved per argument in my case to instead brief
unpreserved arguments on my Petition for Writ of
Certiorari is a clear showing that Attorney Tripp
does not have my best interest as top priority.

I ask that you please withdraw the Petition for
Writ of Certiorari submitted by Attorney Tripp on my
behalf and allow me the time and opportunity to
file a Pro Se Petition for Writ of Certiorari. I
ask that you do not let the S.C. Commission for
Indigent Defense sacrifice my well developed and
preserved issue in order to shield themselves
from a ruling of ineffective assistance of appellate
counsel. I thank you for your time and energy on
this matter.

1/26/15

Thank you,
John J. Moore Jr.
John J. Moore Jr.

On the 26th day of January, 2015
Susan H. Dye

Commission Expires
March 5, 2018

EXHIBIT #1

LOCAL: Frigid temps delay Berkeley, Charleston schools, AS

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Ex-chief fired in self-defense, lawyer argues

Combs' trial begins in killing of unarmed black man in Eutawville

BY CHRISTINA ELMORE
celmore@postandcourier.com

ORANGEBURG — The murder trial of former Eutawville Police Chief Richard Combs got underway Wednesday with prosecutors alleging that he

gunned down an unarmed black man in an absolute senseless act of violence.

Combs' lawyers didn't dispute that he killed Bernard Bailey in May 2011 dur-

ing a dispute over a traffic ticket outside their tiny rural community's Town Hall. But they insisted that Combs, 38

and white, acted in self-defense.

Combs faces 30 years to life in a case that has attracted national attention in

the wake of other high-profile, police-involved deaths of unarmed black men

in Ferguson, Missouri, and New York City. Neither side in the Combs case is

arguing that race played a central role

in his death, but the case has still attracted reporters from The New York Times and other national outlets to a

crowded courtroom in Orangeburg.

During his opening statement, John O'Leary, an attorney for Combs, argued

the ex-chief fired his weapon to protect himself after a failed attempt to arrest

Bailey, a former prison guard, on an

Please see TRIAL, Page A6



LARRY HADDZ/TIMES & DEMOCRAT

Former Eutawville Police Chief Richard Combs insists to opening statements Wednesday.



Bailey

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Defense attorney John O'Leary gives opening statements on the first day of testimony in the trial of former Eutawville police chief Richard Combs on Wednesday in Orangeburg.



Orangeburg County Sheriff's Office Capt. Lacro Jenkins shows the jury a photograph of shooting victim Bernard Bailey's truck on Wednesday the first day of testimony.



PHOTOGRAPHS BY LARRY HARDY/TIMES & DEMOCRAT

Ex-chief fired in self-defense, lawyer argues

TRIAL, from A1

obstruction of justice charge. The warrant for Bailey's arrest stemmed from a dispute the men had two months earlier over a ticket Combs had issued to Bailey's daughter for driving on a broken taillight.

The 6-foot-6-inch Bailey stalked off when told he was being taken into custody. Combs chased after him, jumping into the open door of Bailey's truck as he tried to back out of a parking lot at Town Hall, authorities said. Bailey was shot point-blank in the chest, the abdomen and the shoulder during

the scuffle that followed.

"We want the truth to come out," O'Leary told the jury, "and we want the entire story to be told. The defendant had a legitimate right to arrest (Bailey) on a valid police warrant, our system is in chaos. This could have been resolved in the court system had Mr. Bailey complied with the arrest."

First Circuit Solicitor David Pascoe argued that Combs "stewed" for months before presenting Bailey with a "trumped up" warrant. Bailey was then "gunned down in an absolutely

senseless act of violence," he told the jury.

"Mr. Bailey never hits or struggles with the defendant. He doesn't have a weapon, Pascoe said. "The defendant, I submit, had no injuries at the scene. But Mr. Bailey gets killed over a broken taillight."

O'Leary challenged the state's position that Bailey was un-armed when he was killed.

"There is a weapon. It's the truck. The minute Mr. Bailey put that truck in reverse that was like cocking a gun," O'Leary argued, alleging Combs feared being dragged under the truck and killed. "Is it a tragedy? Oh

my God, yes. But it's one that could have been avoided had Mr. Bailey complied."

O'Leary said Combs opened fire as he fell from the truck, in fear for his life.

The 12-member jury heard testimony from multiple witnesses, including Bailey's former neighbor, Christel White, who saw the shooting and Orangeburg County Sheriff's Capt. Lacro Jenkins, who testified Bailey's feet were positioned on the brake at the time of his death.

A paramedic also testified that when he arrived at the scene, Combs denied falling to the ground, had no abrasions

and said he wasn't in pain.

An hour later at the hospital, Kelly Kinsey testified Combs told him he had fallen and "was feeling sore all over." Kinsey said on cross-examination however that an adenalin rush following a stressful incident can sometimes prevent one from initially feeling pain.

In his questions, Pascoe hammered away at Combs' accounts of the incident, prompting objections from the former chief of the incident, prompting objections from the former chief of the incident, prompting objections from the former chief of the incident. That caused the solicitor to jokingly claim Combs' attorney's simply didn't want the jury to hear the truth.

Defense attorney Wally Fays-

soix later stated he must have been on the verge of a good question after he, too, was cut off by an objection, this time from the solicitor.

The banter led Fayssoix to move for a mistrial, arguing the state was manipulating the minds of the jury. Circuit Judge Edgar Dickson admonished both sides before deciding to rule on the motion on a later date.

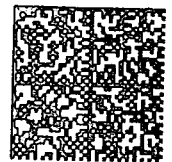
Reach **Christina Elm** at 937-5908 or at [Twitter.com/ce1monePC](https://twitter.com/ce1monePC). The **Associated Press** contributed to this story.

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JAN 26 2015

Honorable Daniel Shearouse
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