

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Williamsburg County  
R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
MAR - 4 2015  
S.C. Supreme Court

GERLINE PRESSLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001582  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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Trial counsel erred in not consulting sufficiently with petitioner prior to trial in order to develop a proper self-defense claim and an immunity from prosecution case per the Protection of Persons and Property Act, codified under S.C. Code Ann. 16-11-440 as the Castle Doctrine, because this immunity was applicable to petitioner since she was attacked in a place “where [she] had a right to be,” i.e., on family owned land, and therefore had a right to protect herself from her attacker. .... 4

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## ISSUE PRESENTED

Trial counsel erred in not consulting sufficiently with petitioner prior to trial in order to develop a proper self-defense claim and an immunity from prosecution case per the Protection of Persons and Property Act, codified under S.C. Code Ann. 16-11-440 as the Castle Doctrine, because this immunity was applicable to petitioner since she was attacked in a place “where [she] had a right to be,” i.e., on family owned land, and therefore had a right to protect herself from her attacker.

## STATEMENT

Petitioner Gerline Pressley was convicted of attempted murder and possession of a weapon during the commission of a violent crime during the May 2012 term of the Williamsburg County General Sessions Court before Judge George C. James, Junior. Petitioner was sentenced to imprisonment for an aggregate term of sixteen years. App. 1-562. William Legrand Caraway represented petitioner at trial and Kimberly V. Barr appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On October 23, 2012, petitioner filed a PCR application with the Williamsburg County Office of the Clerk of Court. App. 564-576. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action in the case. App. 577-580. A PCR hearing was convened on May 27, 2014, at the Williamsburg County Courthouse before Judge R. Ferrell Cothran. Petitioner was present at the hearing and represented by Charles T. Brooks, III, and Assistant Attorney General Daniel Gourley appeared on behalf of the state. App. 581-628.

On July 7, 2014, Judge Cothran issued an Order of Dismissal in the case. App. 630-639. Petitioner appealed Judge Cothran's Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in not consulting sufficiently with petitioner prior to trial in order to develop a proper self-defense claim and an immunity from prosecution case per the Protection of Persons and Property Act, codified under S.C. Code Ann. 16-11-440 as the Castle Doctrine, because this immunity was applicable to petitioner since she was attacked in a place “where [she] had a right to be,” i.e., on family owned land, and therefore had a right to protect herself from her attacker.

This case evolved out a land dispute. In 1997, Mary Louise Pressley deeded her ownership of 97 acres of family land in Williamsburg County to her son Thomas Pressley. In 2010, Thomas Pressley filed papers to eject petitioner (Gerline Pressley), Alberta Pressley, and Margie B. Pressley, who were his sisters and Mary Louise Pressley’s daughters, off the land his mother deeded to him. On June 21, 2010, petitioner, Alberta Pressley, and Margie Pressley filed papers in court requesting a hearing in response to Thomas Pressley’s attempt to eject them from the family land. One week later, a physical altercation between Thomas Pressley and his sisters (petitioner and Alberta Pressley) occurred. App. 107, 1. 2-7; App. 110, 1.2-11. Petitioner and Alberta Pressley were charged with assault and later tried together as co-defendants in General Sessions Court. Petitioner and Thomas Pressley testified at trial describing the physical altercation between them. Margie Pressley testified at trial admitting that she did not witness the altercation in question, and Alberta Pressley did not testify at trial.

At trial, petitioner testified that on June 28, 2010, she was pulling up flowers/trees from the family home on their land where she was born and raised, (which was also the land on which she had erected her own mobile home), when Thomas Pressley approached and told her to leave. Petitioner explained that Pressley went to the mailbox, retrieved a gun, and “came after [her].” Petitioner stated that she knocked the gun out of Pressley’s hand, and then picked-up the gun and

started shooting because she believed he was going to kill her as he promised to do so previously. App. 277, 1.8-p. 285, 1.11.

Thomas Pressley testified at trial describing the events that led to the shooting. Pressley stated that he arrived at the family home on June 28, 2010, and was about to open the front door when he heard a noise that sounded like a “pop.” Pressley stated that he turned around to find petitioner shooting at him so he “charged” at her and got on top of her; and that while doing so Alberta Pressley appeared, grabbed the gun and hit him, and that they all tussled on the ground. Pressley claimed that he was shot eight times by petitioner. Tr. 118, 1.1-p. 126, 1.8; App. 129, 1.13-9.131, 1.8. Mother, Mary Louise Pressley died February 18, 2011. Tr. 106, 1.18-23.

During the PCR hearing held in the case, petitioner testified that Thomas Pressley had been threatening to kill her for a long time, but that counsel did not learn of this information, or in effect any other corroborating self-defense information or Castle Doctrine information due to the lack of proper consultations with her. App. 592. 1.2-10; 585, 1.20-23; p. 588, 1.2 - App 594,1.19. Petitioner testified regarding this issue as follows:

Q. Ms. Pressley, do you recall how many – how many meetings you had with Mr. Carraway before your trial?

A. Yes.

Q. How many were those?

A. None

Q. No meetings?

A. Not one.

App. 595, lines 19 – 25.

Trial counsel testified at the PCR hearing and explained that he did not recall how much time he spent talking to petitioner about the case and admitted that he did not talk to any Pressley

family members other than petitioner. App. 602, 1.9-16; App. 610, 1.6-22. Counsel stated that his belief was that the Protection of Persons and Property Act did not apply in petitioner's case. App. 600, 1.24-p. 601, 1.19. App 613, 1.25-p. 614, 1.2. Counsel elaborated on his position on the Castle Doctrine as follows:

Q. Now, let me ask you this though, [defense counsel]. You do acknowledge that you did not try to use the stand-your-ground under the protection from---

A. This was her mama's house where she was.

Q. I understand.

A. This was her mama's house.

Q. I understand, but you do acknowledge that you did not try---

A. No.

Q. ---to use that---

A. Because it didn't fit...the facts did not fit stand your ground.  
App. 609, 1.25 - p. 610 l. 2.

However, the Castle Doctrine indeed applied in petitioner's case. The trial judge in effect urged defense counsel to raise the Castle Doctrine issue at the close of the pre-trial hearings as follows:

The Court: Right. Okay. No identification issues, any stand your ground or Castle Doctrine statute? Sounds like somebody might be claiming self-defense at some point. Of course, the Castle Doctrine and that stand your ground law is an immunity statute, it's not a defense, it's an immunity, now I can see how it might all dovetail at some point. ....Anything else?

[Defense Counsel]: Not at this time.  
App. 41, lines 11 - 16.

Then, at the close of the case, the trial judge again brought the Castle Doctrine to defense counsel's attention as follows:

The Court: Well, what nobody has discussed is this Castle Doctrine statute that we have. Nobody's brought that up. And it's not only a defense, it's an immunity that's raised prior to trial. If you are in a place where you have to a legal right to be, there is no duty to retreat. Nobody's even mentioned that. App. 416, lines 11-16.

Clearly, the Castle Doctrine under 16-11-440 (c) applied to petitioner's case because although section (a) of S.C. Code Ann. 16-11-440 refers to immunity from one who removes another from his home/vehicle; nonetheless, section (c) of S.C. Code Ann 16-11-440 offers immunity to one who is "attacked in another place where he/she had a right to be." Here, petitioner was at the family home on family land where she had a right to be without a doubt. However, note that the Castle Doctrine is predated in the accused demonstrating in sharing the elements of self-defense. See State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013).

In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Also, depending on the circumstances, words accompanied by hostile acts may establish self-defense and one has a right to act on appearances. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). In petitioner's case, the elements of self-defense existed, but because counsel neither consulted with petitioner sufficiently before the trial nor interviewed her family members, then he (counsel) could not adequately develop a proper self-defense claim in the case. For example, during the PCR hearing, petitioner's brother explained that Thomas Pressley, aka "Big Shot," had a family history of threatening him and his siblings, particularly petitioner. Larry Pressley testified that

Thomas Pressley pointed a gun on him in the past and threatened to kill him many times.’ Larry Pressley testified that Thomas Pressley also tried to blow him up by lighting a match to his gas tank in the past. Finally, Larry Pressley stated that petitioner’s trial counsel never contacted him about petitioner’s case. App. 619, l. 9 – p. 624, l. 6. Additionally, Alberta Pressley testified at the PCR hearing and explained that it was common knowledge among the family that Thomas Pressley had threatened his siblings and that he specifically threatened petitioner.

Petitioner testified at the PCR hearing and explained that Thomas Pressley had been threatening her and other siblings for a very long time. App. 584, l. 12 – p. 587, l. 6. Petitioner explained as follows:

Q. Okay. Now, so did you have the opportunity to tell [defense counsel] what you just told the Court about Thomas [Pressley] threatening you?

A. No, [trial counsel] didn’t talk to me. [Trial counsel] didn’t have time, probably. The way I see, [trial counsel] didn’t have time to listen to what I had to tell him, but the day before court [trial counsel] wanted me to explain and tell him everything what was going on, which I could not do that, because it was just the one day before court. App. 592, lines 2 -10.

Although the trial judge denied counsel’s request for a self-defense jury instruction, (see App. 426, lines 4-7; App, 428, lines 14-20), counsel’s argument for a self-defense charge was inadequate as it was limited to the details of the events that occurred on that day, which were indeed relevant, but counsel added no corroborative evidence regarding a history of these threats to kill made by Thomas Pressley to petitioner to support further petitioner’s “belief...of losing [her] life” during the attack. Had counsel properly developed the self-defense claim with these corroborative family background/history facts regarding prior threats, then petitioner’s fear of Thomas Pressley on the day of the shooting would have been established as more credible and satisfied the element regarding proof of her belief that she was in danger of losing her life when she was attacked.

Sans knowledge of this family background and history, which counsel knew nothing of since he did not consult sufficiently with petitioner prior to trial, his request for a self-defense charge was limited to the what occurred on the day in question as follows:

Defense Counsel: What [petitioner] said was...[Thomas Pressley] was going to kill me...after [petitioner] took that gun, he said he was going to kill [her] His guns are in his house...He told [petitioner] he was going to kill[her] that day, he came out with a gun...He had the mail in his hand along with the gun, [they] struggled...[petitioner] shot at him before he could get into the house to get his pistol. App. 406. L. 22 – p. 407, l. 13.

Defense Counsel: That's the reason she shot him. Their whole idea is that he came -- she came up and -- out of the bushes, he was going in his house and she started shooting at him ... He started out with a gun that day, [she] got the gun from him, he said he was going into the house to get a pistol to come out and shoot [her]... because he said he was going in the house to get a pistol to shoot [her]. App. 428, l. 21 – p. 429, l. 9.

Again, what was missing from petitioner's case was corroboration via background family history and testimony at trial in support of petitioner's "belief...of losing life" element of self-defense. Note the case of State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987), where the Court held that uncommunicated threats made by a deceased against a defendant are admissible at trial in order to establish self-defense. Also, this proper self-defense claim would have strengthened a Castle Doctrine argument that should have been raised in the case.

Additionally, what was missing from petitioner's trial was the next logical step, which would have been the submission of a Castle Doctrine presentation on petitioner's behalf. Counsel erred in failing to do so based on his position that such a claim "did not fit" because there was sufficient evidence in petitioner's case establishing immunity by a preponderance of the evidence via the Castle Doctrine. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). S.C. Code Ann § 16 -11-450 provides immunity from prosecution if a person is found to be justified in using deadly force.

Petitioner's case involved a right to this immunity as she was in a place (a family member on family land) where she had a right to be present. Specifically, under 16-11-440 (c) the Act provides that one is justified in using deadly force if:

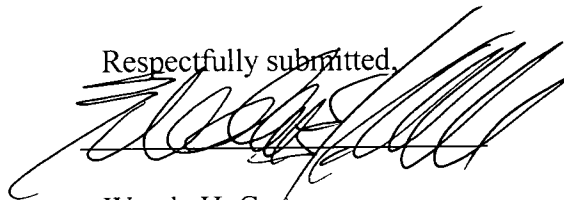
A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person...

Here, petitioner was rightfully on her family land on the grounds of her family home engaged in a legal activity when she was attacked. Therefore, she had no duty to retreat, but rather, she had the right to stand her ground. Trial counsel erred in not consulting with the petitioner sufficiently prior to trial in order to gain sufficient family history in support of a proper self-defense case and a Castle Doctrine claim for presentation at trial. Counsel's deficient performance in reference to these two issues violated petitioner's right to effective assistance of counsel in a criminal case as guaranteed under the Sixth Amendment to the United States Constitution; and but for counsel's ineffectiveness at trial as outlined, a reasonable probability exists that the outcome of petitioner's trial might have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

#### CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the issue raised above in the case.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 4th day of March, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Williamsburg County

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GERLINE PRESSLEY,

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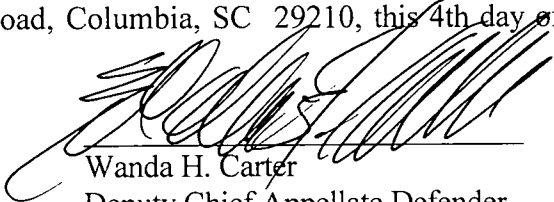
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ms. Gerline Pressley #350981, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 4th day of March, 2015.

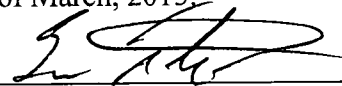


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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of March, 2015.



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(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.