

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. Supreme Court

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Certiorari to Marlboro County

R. Ferrell Cothran, Jr., Circuit Court Judge  
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KENWOOD BRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001846  
\_\_\_\_\_

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

LANELLE CANTEY DURANT  
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ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not requesting a jury charge on voluntary manslaughter when Co-defendant Victoria Knight testified that Petitioner Bright and the victim were arguing just moments before the shooting?

## STATEMENT

In September 2008, the Marlboro County Grand Jury indicted Petitioner Kenwood Bright for murder. On March 8-11, 2010, Bright proceeded to trial before the Honorable William H. Seals, Jr., and a jury. Bright was represented by Miesha Brown, Emily Crayton, and J. Richard Jones. The state was represented by Elizabeth R. Munnerlyn. App. 1. The jury returned a verdict of guilty as indicted. Judge Seals sentenced Bright to life without the possibility of parole. App. 516, ll. 1 – 6. Bright's attorney filed a notice of appeal which was perfected by the Office of Appellate Defense with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal on May 9, 2012. State v. Bright, 2012-UP-288 (Ct. App. filed May 9, 2012).

On August 28, 2012, Petitioner Bright filed an application for post-conviction relief (PCR). The state filed a return on January 17, 2013. Bright filed an Amendment to his PCR application on May 10, 2013. An evidentiary hearing was held on January 14, 2014 before the Honorable R Ferrell Cothran. Bright was represented by James M. Biddle, and the state was represented by Joshua L. Thomas. App. 537. On August 14, 2014, Judge Cothran filed an order dismissing Bright's PCR application and dismissing it with prejudice. App. 599 – App. 611. Bright's attorney filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not requesting a jury charge on voluntary manslaughter when Co-defendant Victoria Knight testified that Petitioner Bright and the victim were arguing just moments before the shooting.

Kenwood Bright was charged with shooting Chris Dease on July 22, 2008 while Chris was standing in the street in front of his aunt's house in Bennettsville. Bright's girlfriend, Victoria Knight, was with him. Chris died shortly after the shooting. The state's story was that Bright had been shot a few months earlier by Chris Dease's uncle. The bullet was still lodged in Bright's spine and he wanted revenge. App. 53, ll. 16 – App. 58, ll. 10.

After the shooting, Bright fled to High Point, North Carolina where his girlfriend lived. She was apprehended in High Point, and Bright was later arrested in Virginia and charged with murder. App. 58, ll. 11 – 25.

Victoria Knight testified at trial that she and Bright had been dating a few months at the time of this incident. Bright had told her that he had been shot and the bullet was still in him. It still caused him trouble. App. 229, ll. 12 – App. 234, ll. 25.

She and Bright were driving around Bennettsville on the evening of July 22, 2008 after attending a family get together at Victoria's father's house. App. 235, ll. 13 – App. 238, ll. 25; App. 240, ll. 16 – App. 241, ll. 2. When they arrived in Bennettsville, they went down West Main Street and saw a man standing outside near a trailer. Another man with a dog was on the passenger side of the car. Bright stopped the car in the middle of the road. Bright talked with the guy on his side of the car, the driver's side. It was a friendly conversation. App. 241, ll. 3 – App. 249, ll. 1. The man on the passenger side with the dog then leaned over and looked through the passenger window and saw that it was Bright. Then that man said to Bright:

You got balls to be on this street.

App. 249, ll. 1 – 19.

According to Victoria, that was when the man and Bright started arguing back and forth about something that had happened to Bright before. That was when Bright reached behind his back, pulled a gun and shot. They took off. When she looked back, she saw the man with the dog lying on the ground. App. 250, ll. 1 – 254, ll. 25.

Jacobie Kenta Samuels was the man standing in front of the trailer when Bright stopped his car. He had known Bright ten years or more. He and Bright had a friendly relationship. App. 74, ll. 5 – App. 75, ll. 11. On July 22, 2008, he was at his aunt's trailer with his cousin, Chris Dease. Chris had his pit bull with him. App. 75, ll. 12 – Ap. 77, ll. 20. Bright pulled up and spoke to Samuels. He had a girl with him. Chris was on the other side of the road. Then Bright and Chris started talking for a brief time. Samuels could not hear what they were saying, but seemed like an ordinary conversation. Then he saw Bright pull a gun and shoot. Bright reached over the girl and shot through the passenger window. Then Chris fell and Bright took off. App. 86, ll. 13 – App. 95, ll. 25.

Eureka Zimmerman was standing on the corner about two houses away from the incident. App. 194, ll. – App. 197, ll. 14. She saw Chris standing in the middle of the road and saw Bright drive up and stop. Chris walked to the car and leaned down talking to someone through the passenger window. She then heard a shot and Chris fell back. She did not hear any arguing. App. 201, ll. 13 – App. 211, ll. 19.

On cross examination, she admitted that she wrote in her statement that she did not know who was in the car when Chris was shot. Her statement read that Chris and the person were talking, but the conversation must have got out of hand because she heard the shot and saw Chris

fall. Eureka testified that the police told her not to put a name in her statement as to who did the shooting. App. 213, ll. 14 – App. 218, ll. 9.

During the jury charge conference, the judge asked trial counsel if she intended on requesting a lesser included offense.

**Court:** Does the defense intend on requesting a lesser included offense?  
And if so, I will be glad to hear from you.

**Defense:** No, Your Honor.

**Court:** All right. And just for the record, even though you have not requested a lesser included offense, I personally have considered a lesser included offense, and I do not find it applicable to the facts of this case.

App. 460, ll. 15 – 24.

At his PCR hearing, Bright testified that trial counsel was ineffective for not requesting a jury charge on the lesser included offense of voluntary manslaughter. He stated that Victoria Knight testified that there was an argument “in the heat of passion” just before the shot. Bright explained that the trial court asked counsel if she wanted a lesser included offense of manslaughter and she said no. Counsel never discussed with Bright a lesser included offense. Before the trial, she had tried to get him to plead guilty to voluntary manslaughter for a sentence of twenty-five years. Trial counsel’s rejection of the opportunity to ask for the lesser included was prejudicial to Bright because if he had been convicted of voluntary manslaughter, he would have a lesser sentence and not be serving a life sentence. App. 541, ll. 12 – 25; App. 548, ll. 22 – App. 551, ll. 16. Even though the judge said he would not have given a charge on the lesser included offense, trial counsel did not try and made no argument for it. App. 564, ll. 15 – 23.

Trial counsel testified at the PCR hearing that she recommended to Bright that he plead guilty due to the evidence the state had against him. Bright’s defense was that he did not shoot Chris Dease. App. 565, ll. 10 – 25; App. 567, ll. 17 – App. 568, ll. 23. Trial counsel did not

request a charge on a lesser included offense because Bright did not want one. He directed her to go for all or nothing. She said that every single decision in the trial came from Bright. He rejected a plea to voluntary manslaughter. The PCR attorney argued on cross that this was not a plea but an argument to the court for a lesser included offense. Trial counsel responded that all of the defense team including Bright decided that the lesser included charge was not appropriate under their strategy of the case. PCR attorney asked if it would not be proper to decide during trial when things were not going their way, if they should decide to ask for a lesser included to hedge all of the bets. Trial counsel responded that a lesser included offense was not automatically granted to everyone. She did not think that the lesser included would apply based on what she had presented to the court. App. 575, ll. 8 – App. 580, ll. 6.

Trial counsel testified on cross that there was no evidence of heat of passion in the trial she said that “no one testified to anything that would meet the elements of heat of passion, prior to the shot being fired.” App. 586, ll. 6 – App. 587, ll. 16. her trial strategy was not to ask for a charge on voluntary manslaughter. App. 591, ll. 19 – 25.

The PCR judge ruled that he found trial counsel’s testimony to be very credible, but found Bright’s testimony to not be credible. App. 605. The PCR judge agreed that the lesser included offense was not applicable under the facts of this case. He ruled that this claim of ineffective assistance of counsel was without merit. Trial counsel’s strategy was that Bright did not shoot the victim. This claim was without prejudice to Bright because the trial judge said he would not have charged it anyway. App. 606. The judge found that Bright failed to carry his burden of proving ineffective assistance of counsel. App. 605.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that

the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel’s performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Supreme Court ruled in State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), that the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given, and the trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.

Voluntary manslaughter is the unlawful killing of another without malice, express or implied. S.C. Code Section 16-3-50.

Trial counsel was ineffective for not requesting a jury charge on voluntary manslaughter as Victoria Knight’s testimony indicated there was argument ignited by the remark of the victim. The victim’s remark that Bright had “balls to be on this street” could be interpreted to be a threatening remark-especially considering the history of Bright being shot by the victim’s family. Even though

the trial judge said he would not have given the charge on the lesser included, trial counsel had the opportunity to change the judge's mind with an argument for it.

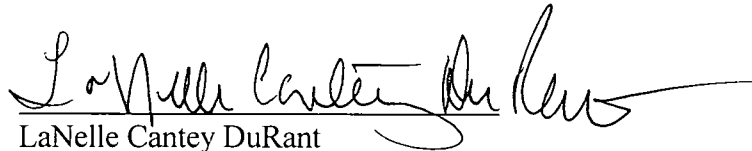
Trial counsel told the PCR court that voluntary manslaughter did not fit Bright's defense that he did not do it. Bright had not denied being there, and there were at least two eyewitnesses who claimed they saw Bright shoot. The jury could not have believed the defense theory that Bright did not do this, but still found Bright guilty of the lesser included offense. Bright was facing life in prison. Trial counsel should have provided as many options as legally possible for a lesser sentence.

Bright had been shot in the back and still experienced trouble with the bullet lodged in his spine. This could have made him more prone to reaching the point of heat of passion more quickly.

CONCLUSION

Based on the above, certiorari should be granted, and his case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written in a cursive style with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of April, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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R. Ferrell Cothran, Jr., Circuit Court Judge

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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 Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Kenwood Bright, #273013, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 29th day of April, 2015.



LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day  
of April, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.