

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Williamsburg County  
R. Ferrell Cothran, Jr., Circuit Court Judge  
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**RECEIVED**

SEP 13 2016

S.C. SUPREME COURT

EDMOND GOODMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002471

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PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO AUSTIN v. STATE  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to object to the trial judge's jury instruction that allowed them to infer malice from the use of a deadly weapon in violation of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

## STATEMENT

Petitioner Edmond Goodman was convicted of murder and possession of a weapon during the commission of a violent crime during the March 2009 term of the Williamsburg County General Sessions Court before Judge Michael G. Nettles. Petitioner was sentenced to an aggregate prison term of thirty years. App. 1 – 140. Petitioner was represented by Legrand Carraway, and Assistant Solicitors Kimberly V. Barr and Ronnie A. Sabb appeared on behalf of the state. Petitioner appealed, but his convictions and sentences were affirmed by the South Carolina Court of Appeals. See State v. Goodman, Op. No. 2011-UP-541 (Ct. App. filed December 5, 2011).

On June 8, 2012, petitioner filed a PCR application with the Williamsburg County Office of the Clerk of Court. App. 412 – 419. The respondent filed a return dated June 27, 2013, requesting that a hearing be held in the case. App. 420 – 425.

A PCR hearing was convened on December 16, 2013, and at the Williamsburg County Courthouse before Judge R. Ferrell Cothran. App. 427 – 451. Petitioner was present at the hearing and represented by David Carricker, and Assistant Attorney General Daniel Gourley appeared on behalf of the state. On January 14, 2014, Judge Cothran issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 461 – 469.

On April 21, 2014, petitioner filed a second PCR application for post-conviction relief requesting a belated PCR appeal in the case. See Supp. App. A second PCR hearing was convened on October 2, 2014, at the Sumter County Courthouse before Judge Clifton B. Newman. App. 453 – 459. 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. On November 10, 2014, Judge Newman issued an Order granting petitioner's request for a belated PCR appeal per Austin v. State,

305 S.C. 453, 409 S.E.2d 395 (1991). App. 470-471. Petitioner appealed. This Austin petition brief follows.

### ARGUMENT

Trial counsel erred in failing to object to the trial judge's jury instruction that allowed them to infer malice from the use of a deadly weapon in violation of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

Petitioner was convicted of murder and possession of a weapon during a violent crime. At trial, five state's eyewitnesses testified regarding the shooting of Jaron White by petitioner while they were all inside the residence that belonged to Frederick Williams.

Shannon Singletary testified that on July 18, 2008, while present inside Williams' dwelling, she heard petitioner and Jaron White arguing, and she saw petitioner grab a gun and shoot Jaron White during the argument. App. 44, l. 21 – p. 58, l. 25. White was questioning Jimmy, who was with petitioner in the residence on that day, about why he had assaulted his (White's) cousin on a prior occasion. Petitioner interjected and began arguing with White about that prior assault. App. 100, l. 12 – p. 102, l. 16.

State's witness Milton T. Phillips testified that he was present at the crime scene and heard petitioner and Jaron White arguing, and then saw petitioner shoot Jaron White during the argument. App. 92, l. 14 – p. 104, l. 25.

State's witness Thermaine Jamar Gourdine, who was present at the crime also, testified that he heard petitioner and White arguing on the day in question, and that shortly thereafter, the gun flew out" and he saw petitioner shoot White. App. 163, l. 7 – p. 170, l. 13; App. 173, l. 4 – 8.

Corey Gourdine, who was yet another eyewitness at the crime scene, testified that he saw petitioner grab a pistol while arguing with White, and that petitioner then shot White. App. 205, l. 8 – p. 214, l. 12.

State's witness Cleveland T. Williams testified that he was present at the crime scene when the shooting occurred, and that he witnessed petitioner and White arguing and the shooting of White by petitioner that followed. App. 237, l. 23 – p. 246, l. 22.

Note that Milton T. Phillips, Thermaine Gourdine, Corey Gourdine, and Cleveland Williams admitted that White was in possession of a gun at the house when the shooting occurred. App. 129, l. 7 – p. 133, l. 25; App. 177, l. 14 – p. 190, l. 25; App. 218, l. 1 – p. 220, l. 25; App. 247, l. 8 – p. 253, l. 25.

The trial judge charged the jury on the law of self defense and the law on voluntary manslaughter. App. 375, l. 6 – p. 379, l. 18. In addition, the trial judge gave the following “inference of malice via the use of a deadly weapon” instruction.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the dead is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used depends on the facts and circumstances of the case. The following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, dirk, dagger, knife, slingshot, metal knuckles, razor, gasoline, fire bomb, Molotov cocktail, and lighter fluid. A gun may be a deadly weapon even if it is not operating.

During the PCR hearing, trial counsel admitted that he did not object to the “inference of malice via the use of a deadly weapon” charge because he did not believe that an objection was

needed there, and that he was not familiar with the Belcher<sup>1</sup> case. App. 435, l. 1 – p. 437, l. 6; App. 439, l. 21 – p. 440, l. 4; App. 440, l. 2 – 4.

The PCR judge ruled that petitioner was convicted prior to the Belcher decision, and that Belcher did not apply to post conviction relief actions. App. 466.

In the case at bar, the trial judge's jury instruction that the use of deadly weapon might raise an inference of malice was erroneous, confusing, and prejudicial in light of the submission of evidence that clearly reduced, mitigated, excused or justified petitioner's actions in the case, which was revealed also by the judge's self-defense and voluntary manslaughter charges. On October 12, 2009, the Belcher Court handed down a clear break from an historical instruction, i.e., that the use of a deadly weapon implied malice, and held that a jury charge that instructs the jury that malice may be inferred from the use of a deadly weapon cannot stand as correct law where evidence is presented that would reduce, mitigate, excuse or justify the homicide. A portion of the Belcher Court's analysis follows:

Say, for example, a homicide occurs by the use of a deadly weapon under circumstances warranting a self-defense instruction. The killing would be intentional, yet under our currently sanctioned charge, the jury would be permitted to find malice merely because "if one intentionally kills another with a deadly weapon, the implication of malice may arise." *Elmore*, 279 S.C. at 421, 308 S.E.2d at 784. That highlights the "half-truth" nature of the charge.

One appellate court has described this jury charge as "half-truth." Glenn v. State, 68 Md. App. 379, 511 A.2d 1110, 1126 (1986). In discussing its meaning behind this observation, *Glenn* notes that malice includes the absence of justification, excuse and mitigation. *Glenn*, 511 A.2d at 1122. When malice is viewed in light of these component parts, it becomes clear that inferring malice from the use of a deadly weapon is indeed only a "half-truth." The absence of justification, excuse or mitigation cannot be inferred from the use of a deadly weapon standing alone. Other facts and evidence

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<sup>1</sup> State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

(or the absence of other facts and evidence) are required for the fulfillment of these component parts.

See also State v. Miller, 725 S.E.2d 724 (2012), where the court held that since the jury was charged with voluntarily manslaughter, then there was evidence to reduce or mitigate murder (gun present), which in turn rendered the malice inference instruction improper.

Under Belcher, the test of whether there is evidence presented that would reduce, justify or mitigate the killing must be acknowledged in analyzing an “inference of malice via the use of a deadly weapon” charge. In the case at bar, White (the deceased) was in possession of a weapon during the argument on the day in question, and White was the aggressor who started the argument that resulted in petitioner reacting in self-defense and/or in sudden heat of passion upon sufficient provocation. Therefore, since evidence existed in this case that would have reduced, justified or mitigated the actions assigned to petitioner, then it was error to charge the jury that it was permissible to infer malice from the use of a deadly weapon in the case.

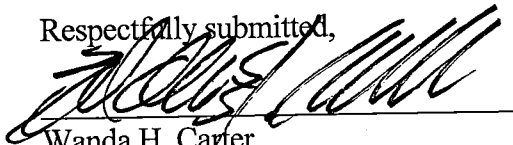
With respect to the PCR judge’s ruling that Belcher’s new rule would not apply in PCR cases, this interpretation must be reviewed in the context of and in conjunction with the Belcher Court’s ruling that if a case was not pending on direct appeal and not yet final at the time of its decision, then the new rule would not have been applicable neither on direct appeal and quite logically nor at PCR. However, to the contrary, if a case had been pending on direct review when Belcher was decided, then quite logically Belcher would have been applicable therein on direct appeal and quite logically at the PCR that followed as well. Belcher was decided on October 12, 2009. Petitioner’s conviction was imposed on March 18, 2009, but his direct appeal transcript was not received by appellate counsel until March 11, 2010, and the initial and final briefs were not filed until August 11, 2010, and February 10, 2011, respectively. Therefore, since petitioner’s direct

appeal was pending on direct review and not yet final when Belcher was decided, then a Belcher claim was reviewable in his case on direct appeal, and quite naturally in a PCR action that followed.

CONCLUSION

Based on the foregoing argument, petitioner requests that this petition be granted and full briefing allowed on the above raised issue in the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November, 2015.

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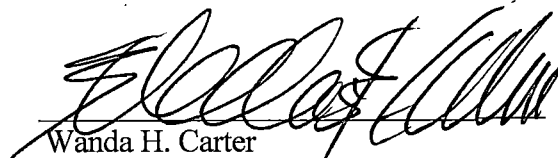
RESPONDENT

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CERTIFICATE OF SERVICE

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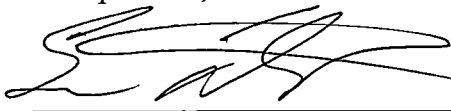
I certify that a true copy of the Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the appendix and supplemental appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Edmond Goodman #271444, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 13th day of September, 2016.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day  
of September, 2016.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.