STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED

MAR 17 2017

S.C. SUPREME COURT

GARVIN V. DUVALL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001845

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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ISSUES PRESENTED

1. Did the PCR court err in not finding trial counsel ineffective for failing to move for a severance of Petitioner Duvall's trial from that of his co-defendant, Frances Moore, when the trial judge said that he was not so sure the two co-defendants needed to be tried together and he had a lot of concern with giving a jury instruction telling the jury to disregard the testimony of a witness as to one defendant but not to the other in a joint trial?

2. Did the PCR court err in not finding trial counsel ineffective for failing to object to the sufficiency of the curative instruction or ask for a mistrial when the judge told the jury to direct the testimony about the victim's fear made by three key witnesses only to the co-defendant Frances Moore and not to Duvall when the testimony was hearsay and its probative value was outweighed by its prejudice to Petitioner Duvall?

STATEMENT

On June 30, 1999, a 911 call reported that a vehicle was burning on Baugh Road in Anderson County. As the firefighters were putting out the fire, they discovered the body of Paul Stephens behind the car under brush. He had been shot in the back of the head and once in the back. App. 112, ll. 9 – 16. The case remained unsolved until 2006 when John Stansell went to the police and told them that he was a really good friend of Garvin Duvall, and that Duvall had told him that Duvall and Frances Moore had killed Paul Stephens. App. 382, ll. 9 – App. 385, ll. 5; App. 390, ll. 1 – App. 393, ll. 8; App. 396, ll. 15 – App. 398, ll. 25.

Stansell said he was a former member of the Ku Klux Klan, and the grand dragon. App. 426, ll. 1 – 14. He claimed he was an Archbishop with the "Reformed Catholic Church," which "would not hold the power of forgiveness of sins, that that only came through God, and we wouldn't pray to saints and would not exalt Mary as much as the Roman Catholic Church. That did change a little later, and I left." App. 396, ll. 1 – 14; App. 416, ll. 15 – 418, ll. 13. Stansell also said he was ordained in the Universal Life Church, that he was Secretary of State in the Gospel Lighthouse Prison Evangelistic Group, and that he was a member of the Celtic Anabaptist Church. App. 418, ll. 14 -422, l. 20.

Stansell claimed that Duvall told him before the murder that Frances Moore was going to pay Duvall $2000 to kill Stephens because Stephens was a "rat." Stansell said that Duvall explained that Moore and Stephens were involved in criminal activity and Stephens was about to be arrested. Moore feared that Stephens would "turn on them." A few days after Stephens was found, Stansell talked with Duvall and asked Duvall if he killed Stephens. Duvall said yes and explained how. Duvall said that he shot Stephens in the back of his head, and Frances Moore was with him and she shot Stephens in the back after he fell down. App. 397, ll. 1 – App. 399, ll. 22.

The state's theory of the case was that Frances Moore wanted Stephens killed because he made her daughter, Debra, commit several forgeries. When Debra confessed to the police in an interview about the forgeries, and claimed that Stephens "made her do it," Moore was heard by the police lieutenant to say: "I'm going to kill that son of a bitch." App. 313, ll. 1 – App. 314, ll. 23.

In April 2007, the Anderson County Grand Jury indicted Petitioner Duvall on the charges of murder, possession of a weapon during the commission of a violent crime, and criminal conspiracy. App. 833- App. 834; App. 867 - App. 870. Ten years after the incident, on May 12 – 13, 2009, Duvall proceeded to trial in a joint trial with his co-defendant, Frances Moore, before the Honorable J. Cordell Maddox. Duvall was represented by Robert Gamble and Matthew Perkins, The state was represented by T. Matthew Bradley and Lauren S. Hogan. Co-defendant Moore was represented by Calhoun Pruitt. App. 1.

In a pretrial hearing, co-defendant's counsel moved that the statement of Stansell be excluded in its entirety because it was hearsay as to Moore. App. 23, 14 – App. 40, ll. 23. Duvall's counsel argued that he needed the full statements in to include the one Duvall allegedly made before the murder, and the one he allegedly made following the murder to Stansell because he wanted to prove that "each and every word was a lie." Counsel argued that if the judge granted the motion, it might interfere with his defense. App. 35, ll. 21 – App. 37, ll. 13.

The judge granted the motion as to the first part but not to the second part. The first part was the statement made before the murder in furtherance of the conspiracy, and the second part were statements he made afterwards where Duvall said that Moore was with him and shot Stephens. The judge said "it's going to be a mess to try." App. 36, ll. 1 – 25; App. 438, ll. 1- 25.

However, when the judge said he assumed there was going to be a motion for severance of the trials, co-defendant's counsel said no. Petitioner Duvall's counsel, Mr. Gamble, said: "State's got a right to sever it if they want to." He did not ask for a severance. App. 41, ll. 1 – 13.

The judge said: "I'm not so sure these people should be tried together but that's not my decision." App. 37, ll. 1 – 20. The judge ruled that the statements as redacted could be used against Duvall but not the Co-defendant Moore. The judge said: "I'll have to give the jury a special charge that they can only consider the statements even though they are redacted as they relate to Mr. Duvall, which does not deal with the issue that we're going to have to deal with if Mr. Gamble uses the statements." App. 38, ll. 4 – 18.

During the trial, the solicitor informed the court that he planned to call three different witnesses who would all give the same testimony. They were Kenneth Erwin, Nellie Erwin, and Rita Woods. They would each testify the decedent was afraid of Moore and that he told them "that if he was ever found shot in the head and his car burned to have Frances Moore investigated." App. 279, ll. 17 – 280, ll. 4.

The solicitor claimed this testimony was admissible under State v. Garcia, 334 S.C. 71, 512 S.E.2d 507 (1999) because it revealed "that was the fear. That's not the why he was afraid. That was the fear . . . and the three witnesses are going to say the same exact thing. So essentially only one would have to testify if you want to hear the actual testimony." App. 280, ll. 2 – 22.

The state then proffered Kenneth Erwin's testimony. Erwin testified his wife, Nellie, was the decedent's first cousin, and he moved in with Erwin and his wife for about six months before he was killed. App. 286, ll. 14 – 287, ll. 12.

Erwin's testimony was that the decedent told him "more than twelve [times] that if he was ever found shot and his car caught on fire to have his mother-in-law investigated." App. 287, ll. 13 – 288, ll. 8. The judge then noted that Erwin did not say anything about the decedent being afraid of Moore during his proffer, and "that's the problem." App. 288, ll. 2 – 8.

The solicitor then tried to establish that Erwin was afraid of Moore. Erwin then testified that the decedent and Moore did not get along. The following then occurred on direct examination of Erwin during the proffer:

> Q. When he [the decedent] would talk to you about Frances Moore how was his demeanor? How would he act?
>
> A. He was scared of her, man.
>
> Q. And when he was actually scared of her what would he say about her exactly?
>
> A. That she was capable of doing things that other people didn't understand that she could do to him.

App. 289, ll. 12 – 18.

Defense counsel Gamble objected that this testimony was hearsay with regard to appellant and that the prejudicial effect of this testimony also far outweighed its probative value. App. 291, ll. 19 – 292, l. 6.

The judge then said: "I mean, this is the problem doing them together. You know, a jury instruction telling them to disregard the testimony as to one defendant I have a lot of concern with." App. 292, ll. 5 – 10.

The judge ruled that the testimony was admissible under State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). App. 291, ll. 7 – 22. The judge told defense counsel Gamble: "I'll give a curative instruction but I think we're skating pretty close to some cumulative problems here. Defense counsel Gamble responded: "You're trying to strain buttermilk after there is something

that's happened to it." The judge said: "I agree with you. I think I am a strainer, too." App. 293, ll. 4 – 13.

The three witnesses then testified in order before the jury. App. 293, ll. 21 – App. 308, ll. 24. The following then occurred on direct examination of Erwin:

Q. And how would you have described their relationship?

A. It wasn't too good of a relationship.

Q. Okay. And what, if anything, did Paul tell you about Frances Moore prior to his death?

A. If he was ever found shot and his car caught on fire to have his mother-in-law investigated.

Q. And how would he act when he would say this to you

A. He was afraid. Like he was afraid.

Q. Did he say this to you more than once?

A. Yes, sir.

Q. How many times?

A. Probably 12 or more times.

App. 295, ll. 13 – 24.

The judge then instructed the jury that Erwin's testimony, and the testimony of the next two witnesses was admitted only in the case against co-defendant Moore but not in their case against Garvin Duvall. App. 298, ll. 16 – 22. There was no objection by Duvall's defense counsel, Mr. Gamble, to the sufficiency of the curative instruction; nor did he ask for a mistrial.

Nellie Erwin was the decedent's first cousin. She testified the decedent told her and her husband: "If he was ever found, been shot or his car had been caught on fire to have her

investigated, Frances [Moore]." Mrs. Erwin said the decedent, who was six feet eight, and weighed two hundred seventy-five pounds was "very afraid" of the diminutive Moore. App. 300, ll. 3 – 12.

Rita Woods then testified that she had met the decedent at a club. She said that the decedent told her that Moore "was capable of anything, and that if was ever - - he was ever found dead, shot, shot in the head and his car was burned . . . that she did it, she had something to do with it." App. 306, ll. 7 – 14.

John Stansell then testified before the jury that on June 27, 1999, Duvall told him that "Paul Stephens [the decedent] was Anderson County's biggest rat, and he said that Paul and he and some other people had been involved in some criminal activity and that Paul was about to get arrested and was going to turn on them, and that Frances Moore was one of the ones that was involved." App. 390, ll. 1 – 23. " Stansell said Duvall then told him "he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene. Stansell said that Duvall then told him he was just joking about killing the decedent. App. 392, ll. 3 – 393, l. 8.

Stansell claimed that after Stephens was murdered on June 30, 1999, Duvall admitted to him that he had killed the decedent. App. 396, l. 18 – App.400, ll. 7. Stansell maintained his conscience was bothering him and that he approached the police in 2006 about his alleged conversations with petitioner. App. 401, ll. 16 – App. 403, ll. 8.

During cross examination of Stansell, defense counsel asked Stansell if Duvall had told him that he received the $2000 from Moore. The solicitor objected that defense counsel was getting into the redacted portion of Stansell's statement. The judge then said: "Thus our problem." The judge continued to say that this was what bothered him as they knew this "was coming" at the beginning of trial. App. 432, ll. 1 – App. 433, ll.25.

The Judge, in camera, told the attorneys:

> Let me tell you the problem I've got. Eventually in a case like this where you are trying two defendants, it's almost impossible. At some point, one defendant's right to confrontation is going to run head-on into one defendant's right to have rules of evidence adhered to in regard to hearsay. And it is a Chinese puzzle. There's no way to make a decision that is a hundred percent right.

App. 434, ll. 4 – 10.

The solicitor argued that defense attorneys knew this could be a problem when they made no motion for severance. They knew there could be "antagonistic defenses." She suggested a curative instruction. App. 434, ll. 12 – App. 436, ll. 10. . The judge asked the solicitor what the curative instruction would be: that defense counsel was "getting ready to cross-examine the witness on testimony that the judge ruled inadmissible in the state's case?" App. 435, ll. 5 – 15.

The solicitor argued in response that she understood the complexity of the issue. The judge responded:

> I don't mind complex. It's impossible that I don't like. And this is why I can't figure out why they are both here today.

App. 435, ll. 16 – 20.

The solicitor argued that the defense attorneys never made a motion to sever, and now were "introducing something to create a mistrial." App. 435, ll. 21 – App. 436, ll. 2.

The judge ruled:

> All right. Well, I mean, I'm in sort of the impossible position of weighing different defendants' rights, which is really where I shouldn't have to be here. But I'm going to allow him to question him on it. I'm having to weigh the right of confrontation against the Rules of Evidence in regard to hearsay.
> And I'm going to take the motion for mistrial under advisement depending on what comes out in the next hour or so. That literally is the only way I know to take care of it at this point. But I do think this should have been anticipated as I've said since Tuesday, because this is where everybody knew we were going to be, and it's a problem.

> I'll allow you to question him on it, I'm assuming against Mr. Pruitt's vigorous objection because it violates the rule prohibiting hearsay from coming in.

App. 436, 11 – Ap. 437, ll. 2.

Defense counsel Gamble then elicited from Stansell on cross examination that after the shooting of Stephens, Duvall told Stansell that he shot Stephens in the back of the head, and that Frances Moore was with Duvall and that she then shot Stephens in the back after he fell down. App. 437, ll. 17 – App. 438, ll. 25.

The jury returned a verdict of guilty on all three charges for both Petitioner Duvall, and Co-defendant Moore. App. 709, ll. 1 – 25. The judge sentenced Petitioner Duvall to thirty years on the murder charge to run consecutive to the sentence of five years for the possession of a weapon charge; and consecutive to the five year sentence for conspiracy for a total of forty years. App. 715, ll. 1 – 13. The judge granted the attorneys some time before post-trial motions. App. 710, ll. 10 -25.

On June 16, 2009, a hearing was held before Judge Maddox for the post-trial motions. Defense counsel moved for a new trial and argued there was not sufficient substantial circumstantial evidence to convict Petitioner Duvall. The judge denied the motion. App. 716, ll. 23 – 25; App. 723, ll. 16 – App. 726, ll. 15.

Petitioner Duvall filed a notice of appeal which was perfected by the Division of Appellate Defense. The Court of Appeals affirmed Duvall's convictions and sentences on February 29, 2012. State v. Duvall, Op. No. 2012-UP-132 (Ct. App. filed February 29, 2012). A petition for a writ of certiorari was denied on September 5, 2013. App. 834.

On September 26, 2013, Petitioner Duvall filed an application for post-conviction relief (PCR). The state filed a return on June 19, 2015. An evidentiary hearing was held on June 8, 2016

before the Honorable R. Scott Sprouse. Petitioner Duvall was represented by Hugh W. Welborn, and the state was represented by Johanna C. Valenzuela. App. 745.

At the PCR hearing, Duvall testified that his trial counsel was ineffective for not moving for a severance of his trial from that of his co-defendant, Frances Moore. Duvall felt he was prejudiced because the statements of the three state's witnesses would have been inadmissible in his trial. He explained that the trial judge said on several occasions that the two defendants should not have been tried together. The trial judge expressed concerns about the joint trial. Still, his attorney did not move for a severance. And Duvall believed that was prejudicial to him. App. 749, ll. 17 – App. 755, ll. 14.

Duvall also believed that his trial counsel was ineffective for not objecting to the curative instruction the judge gave to the jury concerning the hearsay statements by three witnesses: Kenneth Erwin, Elaine Erwin, and Rita Woods. Because trial counsel did not object to the sufficiency of the curative instruction nor ask for a mistrial, the issue was not preserved for appellate review. The statements were prejudicial to him according to Duvall. App. 758, ll. 4 – App. 759, ll. 12.

Duvall testified that he did not have a fair trial. He said that all of the evidence was against Moore. He wanted a chance to have a fair trial. App. 760, ll. 21- App. 761, ll. 22.

On cross examination, Duvall said one reason the trial was not fair was because "the evidence that fell on her fell on him." That was why his attorney should have asked for a severance of the trials. And why he was prejudiced by his attorney not asking for the severance. App. 767, ll. 1 – 16.

Duvall stated clearly that he did not kill the decedent. He claimed that he was at the home of Billy Stansell who testified at trial as an alibi witness, at the time of the murder. App. 768, ll. 1 – 23.

Trial counsel Gamble testified that he "didn't have a basis to sever." The co-defendant made no statement or gave any indication that she was involved in this murder. Counsel said the state's case basically was the statement Duvall allegedly made to the "preacher." The only evidence against the co-defendant was the preacher's testimony about Duvall's alleged statement to him of her involvement. App. 770, ll. 1 – App. 771, ll. 24.

Gamble testified he did not move for a severance when the trial judge asked because he thought that the co-defendant's "non-statement would help us out because they didn't have any evidence really against her except for the statement by Duvall to the supposed preacher." App. 772, ll. 6 – 15. His strategy was to make the preacher look like a liar, and then the co-defendant's silence would also show the preacher was lying. So he believed having the co-defendant in the trial would help Duvall. However, he admitted that it turned out not to be helpful. App. 772, ll. 16 – App. 773, ll. 25.

Trial counsel said he did object to the hearsay by the three witnesses. The curative instruction limited the testimony of those witnesses to the co-defendant and not to Duvall. Gamble said he thought he had preserved the issue. App. 775, ll. 18 – App. 776, ll. 12. He said:

> I thought I had. There was a jumble in the law at that time where you had to make a notice of attempt to appeal, I think, when you're ruled against. And I never understood that. I thought the objection was sufficient to preserve the issue."

App. 776, ll. 12 – 16.

Matthew Perkins, the attorney who assisted in the defense at Duvall's trial, also testified. He said he was not really involved in the strategic discussions about the case. App. 781, ll. 23 – App. 784, ll. 15.

The PCR judge issued an order on September 1, 2016 denying Petitioner Duvall's PCR application and dismissing it with prejudice. App. 833 – App. 841. The judge held that Duvall

failed to establish ineffective assistance of trial counsel because counsel did not move to sever the trials. Duvall did not show that the outcome would have been more favorable because he still would have had the testimony of the preacher, J.W. Stansell, alleging the confession of Duvall. App. 837-App. 838.

The judge held on the failure to object to the sufficiency of the curative instruction by counsel that the evidence of the victim's fear of being shot and his car burned as testified to by both Kenneth and Elaine Erwin and Rita Woods would be harmless error as cumulative toward the testimony of Stansell and the confession of Duvall to Stansell. App. 838 – App. 839.

Petitioner Duvall's attorney filed a notice of appeal. This petition follows.

ARGUMENT

I

The PCR court erred in not finding trial counsel ineffective for failing to move for a severance of Petitioner Duvall's trial from that of his co-defendant, Frances Moore, when the trial judge said that he was not so sure the two co-defendants needed to be tried together and he had a lot of concern with giving a jury instruction telling the jury to disregard the testimony of a witness as to one defendant but not to the other in a joint trial.

A defendant who alleges that he was improperly tried jointly must show prejudice before this Court will reverse his conviction. State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999); citing State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972).

In Zafiro v. United States, 506 U.S. 534 (1993), the United States Supreme Court held that Rule 14 of the Federal Rules of Criminal Procedure did not require a severance as a matter of law when co-defendants presented mutually antagonistic defenses. The Supreme Court held that severance should be granted only when there was a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a codefendant's guilt.

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, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The PCR judge erred in not finding trial counsel ineffective because Petitioner Duvall was prejudiced by the joint trial. If Duvall had a separate trial, the testimony of the three witnesses - the Erwins and Rita Woods- would not have been admissible. The PCR judge ruled that even without these three witnesses, Duvall still had the testimony of Stansell against him. However, the credibility of Stansell was questionable because of his affiliations. Without the three witnesses, there was a strong probability that the outcome would have been different. The testimony of the three witnesses about co-defendant Moore still very likely prevented the jury from making a clear judgment about Duvall's guilt.

Duvall was denied his due process right to a fair trial by being tried with the co-defendant Moore. The jury heard the testimony of the three witnesses, and the curative instruction could not remove it from their minds. Because Duvall was being tried with Moore on the same charges, the testimony went to Duvall as well.

ARGUMENT

II

The PCR court erred in not finding trial counsel ineffective for failing to object to the sufficiency of the curative instruction or ask for a mistrial when the judge told the jury to direct the testimony about the victim's fear made by three key witnesses only to the co-defendant Frances Moore and not to Duvall when the testimony was hearsay and its probative value was outweighed by its prejudice to Petitioner Duvall.

In State v. Weston, 365 S.C. 379, 625 S.E.2d 641 (2006) the Supreme Court held that testimony that Toni Franchey and Suzanne Allen which was only that the decedent was afraid of Weston was properly admitted under State v. Garcia, 334 S.C. 71, 512 S.E.2d (1999). The Court noted that the present state of the declarant's mind is admissible as an exception to hearsay rule, however, "the reason for the declarant's state of mind is not." Citing United State v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1980). The Court noted this state of mind exception must be understood to limit those admissible statements to declarations of condition – "I'm scared"– and not– I'm scared [because] someone threatened me." State v. Garcia, 334 S.C. at 76, 512 S.E.2d at 508; State v. Weston, 376 S.C. at 287, 625 S.E.2d at 645 – 646.

Defense counsel Gamble correctly objected that even if this evidence were admissible its probative value was far outweighed by its unduly prejudicial effect to Duvall. Rule 403, SCRE; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). However, he failed to preserve the issue for appellate review because he did not object to the sufficiency of the curative instruction nor ask for a mistrial. The Court of Appeals did not review the issue because the Court wrote that the issue was not preserved. State v. Duvall, Op. No. 2012-UP-132 (Ct. App. filed February 29, 2012). The Court cited the case of State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006).

(quoting State v. Patterson, 337 S.C. 215, 522 S.E.2d 845, 850, (Ct. App. 1999) which held that because trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for appeal.

In State v. Berry, 418 S.C. 500, 795 S.E.2d 26 (2016), the Supreme Court held that any issues regarding the expert's testimony were not preserved for review because the defendant's objections were sustained, and defense counsel did not take any further measures to have the testimony stricken from the record, curative instructions given, or a mistrial granted.

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, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

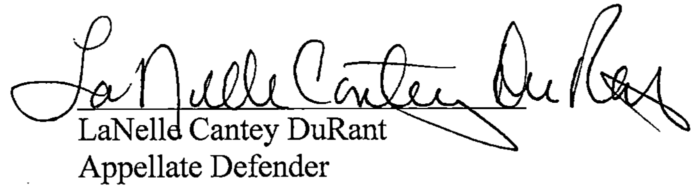
A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would 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. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Trial counsel was ineffective for not objecting to the curative instruction which would have preserved the issue for appellate review. The testimony of the three witnesses was still prejudicial to

Duvall because he was on trial for conspiracy with co-defendant Moore. The evidence against her was prejudicial to Duvall as well. Trial counsel's testimony at the PCR hearing indicated that he did not understand the procedure for preserving the issue of curative instruction which would be standard for a criminal defense lawyer, and especially an experienced one such as trial counsel Gamble. Trial counsel was ineffective because he did not demonstrate the level of competence required in criminal cases. His performance fell below reasonable professional norms.

CONCLUSION

Based on the above, certiorari should be granted and the order of the PCR court reversed and the case remanded for a new trial.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

GARVIN V. DUVALL,

PETITIONER

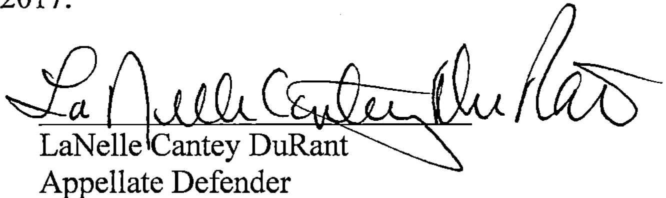
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

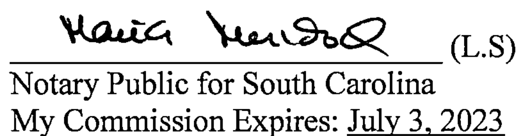
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Garvin Duvall, #334729, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of March, 2017.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me this 17th day of March, 2017.



______________________ (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023