

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Bamberg County

James R. Barber, III, Circuit Court Judge
—————

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MAR 31 2017

S.C. SUPREME COURT

FRANKIE LEE BRYANT, III,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2016-000876
—————

BRIEF OF PETITIONER
—————

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the Court of Appeals err by reversing the ruling of the PCR court when there was evidence to support the PCR court's finding that trial counsel was ineffective for failing to object to the erroneous jury instruction on the degree of force a defendant acting in self-defense is permitted to use?

STATEMENT OF THE CASE

A Bamberg County Grand Jury indicted Petitioner at the May 31, 2004 term of General Sessions for the offense of murder. App. 270-271. His case was called to trial on November 9, 2005 before the Honorable Doyet A. Early, III, and a jury. App. 3. Assistant Solicitor Benjamin Moore represented the state, and Kent Kirkland represented Petitioner. App. 3. At the conclusion of the trial, the jury acquitted Petitioner of murder, but found him guilty of the lesser included offense of voluntary manslaughter. App. 202, ll. 13-23. He was sentenced by Judge Early to twenty five years' imprisonment. App. 209, l. 23 – 210, l. 3.

The Court of Appeals affirmed Petitioner's conviction and sentence pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Bryant, Op. No. 2008-UP-574 (S.C. Ct. App. Filed October 14, 2008). On appeal, Petitioner argued the trial court erred by giving the jury contradictory instructions on the amount of force a defendant may use while acting in self-defense, but conceded the issue was not preserved for appellate review. See App. 278-284.

On October 12, 2009, Petitioner filed an application for post-conviction relief (PCR) raising the issue argued in the Anders Brief of Appellant. App. 215-220. The state filed a return to this application dated March 9, 2010. App. 222-225. The matter proceeded to an evidentiary hearing on July 13, 2011 before the Honorable James R. Barber, III. App. 227. Assistant Attorney General Robert Corney represented the state, and Glenn Walters represented Petitioner. App. 227. By order dated December 12, 2011, Judge Barber granted Petitioner relief. App. 257-261.

The state filed a petition for writ of certiorari with this Court on June 21, 2012. Petitioner filed a return to the petition for writ of certiorari on October 26, 2012. Senior Assistant Attorney General David Spencer represented the state, and Glenn Walters represented Petitioner. This Court ultimately transferred the appeal to the Court of Appeals pursuant to Rule 243(1), SCACR.

By order dated October 8, 2014, the Court of Appeals granted the petition for writ of certiorari and ordered further briefing pursuant to Rule 243(j), SCACR. Pursuant to this order, the state filed a brief of petitioner on October 17, 2014. Subsequently, the Office of Appellate Defense undertook representation of Petitioner. Undersigned counsel filed a brief of respondent on February 6, 2015. Oral argument was held on September 8, 2015. The Court of Appeals reversed the order of the PCR court on January 20, 2016. Bryant v. State, 2016-UP-023 (S.C. Ct. App. filed January 20, 2016); Supp. App. 1-3.

Petitioner filed a petition for rehearing on February 4, 2016. Supp. App. 4-13. At the Court of Appeals' request, the state filed a return on February 12, 2016. Supp. App. 14-18. By order dated March 24, 2016, the Court of Appeals denied the petition for rehearing. Supp. App. 19.

On May 16, 2016, Petitioner filed a petition for writ of certiorari to the Court of Appeals with this Court. The state filed a return to this petition on June 24, 2016. On March 7, 2017, this Court granted the petition and ordered further briefing pursuant to Rule 242(i), SCACR.

This brief of petitioner follows.

ARGUMENT

The Court of Appeals erred by reversing the ruling of the PCR court when there was evidence to support the PCR court's finding that trial counsel was ineffective for failing to object to the erroneous jury instruction on the degree of force a defendant acting in self-defense is permitted to use.

Facts at Trial

Sheila Oliver had been driving around with Willie Wright, the decedent, for a day and half before his death. Wright picked Oliver up in Allendale and the two drove “to several different towns way out in the country.” App. 55, l. 13 – 56, l. 11. While they were driving, the two were smoking crack cocaine and drinking beer. App. 56, ll. 18-20; App. 64, l. 12 – 65, l. 24.

At some point as they were “riding down the road,” they saw Petitioner, and Wright said “Oh, there goes my cousin. I am going to give him a ride.” App. 57, ll. 3-7. Wright stopped and picked up Petitioner. When Petitioner got into the truck, Oliver moved to the middle of the seat between the two men and Petitioner sat on the passenger side while Wright drove. App. 57, ll. 8-13.

After they picked up Petitioner, the group continued to drive around. As they were driving, Wright was bragging that he was “tougher and stronger” than Petitioner and kept “talking about how strong he was.” App. 57, ll. 21-23. Oliver testified that numerous times Wright pulled over on the side of the road, got out of the truck, walked to the passenger side, and “tussled” with Petitioner. App. 57, ll. 14-17. She saw Wright punch Petitioner several times.¹ Not once did Petitioner go over to the driver's side or initiate any of these “tussles.” App. 67, l. 21 – 68, l. 9. Oliver testified that after each “tussle,” the men would get back in the pickup truck and “[r]ide around like there

¹ Oliver testified that Wright was “very muscular” and “was much stronger than [Petitioner] was from what [she] could see.” App. 66, l. 24 – 67, l. 10. She later said Wright was much bigger “[m]uscular wise” than Petitioner. App. 69, ll. 21-25.

ain't nothing happened." She said, "They wasn't upset or anything. Nobody was upset." App. 58, ll. 10-20.

Eventually the three drove to Bamberg and stopped at a place called the "back lot," where they picked up a fourth person, Anthony Gordon. Gordon suggested they go to Nate Johnson's trailer around the corner to buy crack cocaine. App. 89, l. 15 – 90, l. 21. The accounts of what occurred at the trailer vary.

Oliver testified that when the group drove to the trailer the seating arrangements were the same: Wright was driving, she was in the middle, and Petitioner was sitting next to her on the passenger side in the cab of the truck. Gordon was riding in the bed of the truck. Oliver claimed when they arrived at the trailer, Wright parked right in front of the door to the trailer with the passenger side of the truck facing the home. She said Petitioner "got out to let me out because I was sitting in the middle" and had to use the bathroom "because we were drinking beer." App. 58, l. 21 – 59, l. 18; App. 69, ll. 1-8.

As Oliver was walking to the door of the trailer, Wright "was coming around to his [Petitioner's] side [of the pickup truck] to punch him again or whatever." App. 60, ll. 16-17. She claimed Wright and Petitioner "started fussing" and she saw a knife in Petitioner's hand. App. 59, ll. 19-22. She immediately went into the house and, when she returned from the bathroom, she saw Wright on the ground by the passenger side of the truck. He was bleeding "in the stomach area" and had to be taken to the hospital. App. 61, l. 17 – 62, l. 10.

Gordon testified that after Wright, Oliver, and Petitioner picked him up at the "back lot," they drove to Nate Johnson's trailer. On the way, Wright was driving, Oliver was inside the cab, and he and Petitioner were riding in the bed of the truck. Gordon said he was on the driver's side in the bed and Petitioner was on the passenger side. App. 91, ll. 11-20; App. 98, ll. 4-14.

After they arrived at the trailer, Gordon went inside looking for Nate Johnson. When he came back outside, he saw Petitioner and Wright standing by the truck on the driver's side "bull jiving around." App. 92, ll. 6-16; App. 96, ll. 20-22. "At least [he] thought they was bull jiving around." App. 92, ll. 16-17.

Gordon claimed he turned his back to Petitioner and Wright, and then Oliver walked up to him and asked if he thought the occupants of the trailer would let her use the bathroom. He told her he thought they would and she went inside. App. 92, ll. 19-25. The next thing Gordon remembered was somebody screaming. He turned around and saw Wright "falling in the truck" and he eventually fell to the ground. App. 93, ll. 1-7. According to Gordon, Petitioner was standing over Wright with a small silver knife in his hand. App. 93, ll. 9-13. Gordon did not see the stabbing and "didn't even know he [Wright] was stabbed until I seen him lying down there and . . . you could see the blood coming out under his back." App. 94, ll. 1-4. He admitted he did not know who brought the knife to the fight and that he did not hear Petitioner or Wright say anything to each other during the altercation. App. 100, ll. 1-11.

Antoinette Jenkins, who was at Nate Johnson's trailer when the group arrived, testified that she had just woken up when a pickup truck pulled up to the home. App. 72, ll. 20-21. She said the truck parked right in front of the trailer with the driver's side facing the residence. App. 75, ll. 1-10. Four people, three men and a woman, got out of the pickup truck, but Jenkins did not know them. The woman came into the trailer and asked to use the bathroom. App. 72, l. 22 – 73, l. 2.

Jenkins claimed that two of the men outside began arguing and "starting fighting" on the driver's side of the pickup truck. According to her, Wright was leaning "up against the corner of the [driver's] door" which was opened. She claimed Petitioner pulled out what looked like a pocket knife," grabbed Wright on his shoulder and "just started stabbing him and then pushed him . . .

inside the seat part, like where the seat is at in the truck.” Petitioner then backed up and Wright “fell on his back out of the truck.” According to Jenkins, she heard Petitioner say, “I told you.” App. 73, ll. 3-22.

Petitioner took the stand in his own defense. He testified that he and Wright were first cousins and were “very close.” App. 128, ll. 4-11. He explained that, after Wright picked him up that day, they stopped at the store, bought some beer, and then headed to Bamberg to meet his brother because his brother owed him money. App. 126, l. 12 – 127, l. 4. On the way to Bamberg, Wright pulled over several times on the side of the road and each time Wright “got out of his side of the truck, came on my side, and started hitting me.” App. 129, ll. 5-17. He said that Oliver’s account of these stops was accurate. App. 129, ll. 11-17. However, Petitioner gave no explanation as to why Wright would stop the truck and hit him.

Once they got to Bamberg, the group stopped at a car wash where they met Petitioner’s brother. His brother gave him a hundred dollars. App. 129, l. 18 – 130, l. 2. After leaving the car wash, Petitioner testified they went to the “back lot” where they met Gordon. They then drove to a trailer. Petitioner explained that on the way to the trailer, Wright was driving and both he and Gordon were riding in the bed of the truck. He was on the driver’s side and Gordon was on the passenger side. App. 130, l. 7 – 131, l. 16.

When they got to the trailer, he and Wright “had some words” because Wright “wanted my money.” He told Wright that he “wasn’t going to give him” any and then the two “got in a fight.” Petitioner testified that he “got [down] from the bed of the truck on the ground by the driver’s side, and [Wright] busted my lip and started choking me.” He explained that Wright demanded, “‘Give me your money, Frank [Petitioner]. Give me your money.’ I said, ‘Oh, no.’ I couldn’t say nothing. I was trying to push him and push him, trying to get loose from him.” App. 131, l. 17 – 132, l. 15.

Petitioner eventually “pushed him [Wright] against the driver’s side of the door. That’s when I [saw] he [Wright] reached for a knife and he stabbed me right here.” App. 132, l. 16 – 133, l. 1. He showed the jury the three places where he was stabbed. App. 133, ll. 2-9. After he was stabbed, Petitioner continued to try to “get loose” from Wright, but he “couldn’t get no air or nothing. So, I took the knife, tried to take the knife out of his hand.” While Wright was still choking him, Petitioner was able to take the knife from him and stabbed him. Petitioner did not know where he stabbed Wright or how many times. App. 133, l. 11-22. He maintained that the only reason he stabbed Wright was to “try to get loose from him . . . He was choking me.” App. 133, ll. 23-25.

After Petitioner stabbed Wright, Wright let go of him and fell to the ground. App. 134, l. 21 – 135, l. 6. Petitioner said he was scared during the struggle over the knife and could not get away from Wright. Although, he had never “had trouble with [Wright] before,” he knew Wright had “beat up two people” in the past. App. 134, ll. 1-10. He also said that Wright outweighed him by about eighty pounds. App. 149, l. 25 – 150, l. 1; see App. 146, l. 23 – 147, l. 3.

Dr. Laura Knight, the pathologist who performed the autopsy, testified that Wright had a swallow stab wound to his upper right chest and a second stab wound to his left groin area. The wound to his groin severed the femoral artery causing tremendous blood loss. The cause of death was “cardiogenic shock and brain injury” from insufficient blood flow. App. 113, l. 25 – 114, l. 18. Knight later clarified that Wright bled to death. App. 117, ll. 19-21. Additionally, Knight testified that the toxicology results indicated that Wright had alcohol and ephedrine or pseudoephedrine in his system when he died.² App. 119, l. 20 – 120, l. 6.

² Upon his arrest later that evening, Petitioner was taken to the emergency room where he gave a blood sample. The parties stipulated that the toxicology results from the blood sample were negative for alcohol, barbiturates, benzodiazepines, cannabis, cocaine, and opiates, meaning he had no drugs in his system. App. 136, l. 13 – 137, l. 22.

During his closing argument, trial counsel argued that Petitioner acted in self-defense when he took the knife from Wright during the altercation and that he only stabbed Wright, who continued to choke him, to protect himself from death or serious bodily injury. App. 175, ll. 22-24.

There was no dispute that Petitioner was entitled to a self-defense instruction based on the evidence presented. During the court's instruction to the jury, the trial judge included the following language at the conclusion of his charge on self-defense:

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense the defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the defendant is justified in defending himself, then the defendant is also justified in continuing to defend [himself] until it is apparent that the danger of death or serious bodily injury is completely ended.

And finally, in self-defense the degree of resistance ought to be in proportion to the nature of the injury offered; that is, that it should be sufficient to ward off such injury and do no more. In other words, the moment a man disarms or puts himself out of the power of the aggressor to do him further injury, then he should cease from further violence. But if he does commit any further outrage, then he becomes the aggressor.³

App. 197, l. 11 – 198, l. 12 (emphasis added).

Trial counsel made no objection to this instruction.

³ The solicitor requested the trial court charge this highlighted portion, which is based on language from Golden v. State, 1 S.C. 292 (1870). The language from this charge first appeared in State v. Wood, 1 S.C.L. (1 Bay) 351 (1794). Trial counsel made no objection to the solicitor's request and the court charged the jury accordingly. See App. 166, l. 8 – 167, l. 6.

PCR Hearing

Trial counsel, Kent Kirkland, was the only witness who testified at the PCR hearing. He explained that Petitioner's defense at trial was self-defense. App. 239, ll. 12-14.

Kirkland testified that at the end of all the testimony the state requested a jury instruction based on Golden v. State, 1 S.C. 292 (1870), and that the court agreed to instruct the jury accordingly. He explained, "Golden v. State says that the degree of resistance ought to be proportioned to the nature of the injury offered. That is, that it should be sufficient to ward off such injury and no more. For the moment a man disarms or put it out of the power of the aggressor to do him further injury, he ought to cease from further violence and if he does commit any further outrage, he then becomes the aggressor." App. 233, ll. 3-14. Kirkland admitted that this charge was an incorrect statement of the law and that he should have objected. App. 235, ll. 4-13; App. 242, l. 1. Moreover, he admitted that his failure to object to the erroneous charge was prejudicial to Petitioner. App. 236, l. 19 – 237, l. 10; App. 238, ll. 9-14.

Kirkland stated that he thinks "the charge that was used . . . shifts the burden onto the Defendant to sort of stop once he had control. I believe the jury could clearly take that to mean that once he [Petitioner] had control of the knife he somehow should have escaped and . . . they [the jurors] could have believed that the burden was on him [Petitioner] at that point to stop and go no further when the facts of the case would tend to show that that wasn't an option." App. 247, ll. 1-10. He further stated, "I think an individual charge can be given among a dozen charges and that charge can be wrong and influence the trial, depending upon the facts of the case." App. 249, ll. 13-16.

Order Granting Relief

The PCR court found that the degree of force charge given by the trial court was an incorrect statement of the law and that trial counsel was ineffective for failing to object to the

erroneous charge. The court wrote that “a trial judge must charge the jury with the current and correct law of the State” and that “[m]erely superimposing a correct statement of law over an erroneous charge only fosters prejudice and confusion.” App. 260.

In addition to finding trial counsel ineffective, the PCR court also found that Petitioner was prejudiced by counsel’s failure to object to the erroneous charge. App. 261. Consequently, the court reversed Petitioner’s conviction and sentence and remanded for a new trial. App. 261.

Opinion of the Court of Appeals

In reversing the order of the PCR court, the Court of Appeals held the jury instructions on self-defense “substantially charged the correct law and were not prejudicial.” Because of the summary nature of the court’s opinion, it is difficult to ascertain its reasoning. However, it appears the court held the degree of force instruction found in State v. Wood, 1 S.C.L. (1 Bay) 351 (1794) and Golden v. State, 1 S.C. 292, 302 (1870) was a correct statement of the law.

Discussion

There was ample evidence to support the PCR court’s finding that trial counsel was ineffective for failing to object to the erroneous jury instruction limiting the amount of force one is allowed to use when acting in self-defense. Given the facts of this case, there was also sufficient evidence to support the PCR court’s finding that trial counsel’s failure to object to this erroneous charge prejudiced Petitioner. Therefore, the Court of Appeals erred by reversing the order of the PCR court.

“The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel.” Bailey v. State, 392 S.C. 422, 432, 709 S.E.2d 671, 676 (2011) (citing U.S. Const. amend. VI and Strickland v. Washington, 466 U.S. 668 (1984)). The United States Supreme Court has established a two-pronged test to evaluate allegations of

ineffective assistance of counsel. A PCR applicant must show that (1) counsel's performance was deficient, and that (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under the second prong, the PCR applicant “must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

An appellate court **must** “uphold the findings of the PCR judge when there is **any** evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law.” Bailey, 392 S.C. at 432, 709 S.E.2d at 676 (citing Suber v. State, 371 S.C. 554, 558-559, 640 S.E.2d 884, 886 (2007)) (emphasis added).

Here, the PCR court correctly found trial counsel was ineffective for failing to object to the jury instruction limiting the amount of force Petitioner was permitted to use in self-defense during the altercation with Wright and ultimate struggle over the knife. Trial counsel was ineffective for failing to object to this instruction because it was an incorrect statement of the law. See State v. Robinson, 306 S.C. 399, 401, 412 S.E.2d 411, 413 (1991) (“The trial judge must charge the jury with the ‘current and correct law’ of the State.”) and S.C. Const. art. V, § 17. The law in South Carolina does not limit an individual acting in self-defense to proportional force. Such an instruction is clearly erroneous.

Again, the trial court charged the jury with the following language from Golden v. State, 1 S.C. 292, 302 (1870):

And finally, in self-defense **the degree of resistance ought to be in proportion to the nature of the injury offered; that is, that it should be**

sufficient to ward off such injury and do no more. In other words, **the moment a man disarms or puts himself out of the power of the aggressor to do him further injury, then he should cease from further violence.** But if he does commit any further outrage, then he becomes the aggressor.

App. 198, ll. 4-12 (emphasis added).

In Golden, which was decided almost one hundred and fifty years ago, the defendant, who was a police officer with the city of Charleston, was indicted for assault and battery after he used excessive force during the course of an arrest. Golden, 1 S.C. at 292. Golden struck the arrestee on the head and arm “several severe blows with his policeman’s club” breaking the arrestee’s arm. Id. This Court affirmed the officer’s conviction. The Court held, “In the execution of official duties, in the maintenance of the public peace, and the enforcement of the laws, the officer will be protected in the use of so much force only as may be necessary for the prudent and effectual discharge of such official duties. For all excess of force beyond the limits above prescribed, the individual, or the officer becomes criminally responsible.” Id. at 297. The Court further held that whether the officer used excessive force was a question of fact for the jury. Id. In its opinion, the Court cited favorably to the instruction used by the trial court in Petitioner’s case. Id. at 296.

This outdated instruction is no longer good law in South Carolina and is highly prejudicial in a murder prosecution where the defendant asserts self-defense, such as this case.

In State v. Campbell, 111 S.C. 112, 96 S.E. 543 (1918), the defendant shot and killed a man who came at him with a glass bottle. The defendant claimed self-defense. The trial judge charged the jury that under self-defense the defendant was limited to using as much force as was used against him. This Court found the trial court erred in giving this charge and held:

A person assaulted, being without fault and bringing on the difficulty, has the right to use such force as is necessary for his complete self-protection ... The defendant, if without fault, had the right to use such necessary force as required for his complete

protection from loss of life or serious bodily harm and cannot be limited to the degree or quantity of attacking opposing force.

This Court reaffirmed this holding in Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-310 (1998).

Likewise, in State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978), the defendant shot the decedent four times in rapid succession, but alleged self-defense at trial. The state argued Hendrix used excessive force by firing more than once. In directing a verdict of acquittal, this Court held “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” Id. at 661, 244 S.E.2d at 507 (quoting 40 C.J. S. Homicide § 131(b) at 1020 (1944)) (internal quotation marks omitted).

The holdings in Wood and Golden are inconsistent with this Court’s later holdings in Campbell, Douglas, and Hendrix. In reversing the PCR court, the Court of Appeals failed to reconcile these inconsistent and contradictory holdings. Respectfully, this Court should reconcile these holdings for the bench and bar or expressly overrule the out dated opinions in Wood and Golden.

In Petitioner’s case, the state, by requesting an instruction pursuant to Wood and Golden, was attempting to destroy the defense of self-defense by adding a requirement that one in a deadly struggle somehow has the ability to determine the struggle is over when a weapon has been taken from another. That is not the law in South Carolina and it was an obvious error by the trial court to give such an instruction. Simply disarming someone for a moment does not make it apparent that the threat of death or serious bodily injury has ended. The evidence showed Wright was still choking Petitioner at the time Petitioner got the knife from Wright and stabbed him. This fact makes the court’s erroneous instruction highly prejudicial to Petitioner

because it likely misled the jury to believe that Petitioner was required to stop resisting once he got the knife from Wright. The instruction could even be interpreted as a comment on the facts, which is not permitted in South Carolina. See S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”)

This Court has gone to great lengths in recent years “to make sure the burden to disprove self-defense remains on the State.” State v. Taylor, 256 S.C. 277, 235, 589 S.E.2d 1, 5 (2003). The instruction given to the jury was erroneous because it improperly shifted the burden of proof from the state to disprove self-defense to Petitioner in violation of State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). This erroneous instruction essentially gutted the correct self-defense instruction that was charged to the jury and improperly acted as a limitation on Petitioner’s ability to claim self-defense. Consequently, the PCR court’s finding that Petitioner was prejudiced by trial counsel’s failure to object to the erroneous charge was correct.

Not only was the charge given an incorrect statement of the law and prejudicial to Petitioner because it limited his right to claim self-defense, it was also misleading and confusing to the jury because it was inconsistent and contradictory to the correct charge the court had given to the jury a moment before that accurately reflected the law in South Carolina on the degree of force permitted when one is acting in self-defense. See State v. Patrick, 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986), *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (“Merely superimposing a correct statement of law over an erroneous charge only fosters prejudice and confusion.”).

Even if this Court somehow finds the degree of force instruction from Wood and Golden is a correct statement of the law, it should, respectfully, still find the instruction was erroneous. “Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct

verdict.” State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016) (citing State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). “Regardless of whether the charge is a correct statement of the law, instructions which confuse or mislead the jury are erroneous.” Id. Again, the instruction given by the trial court pursuant to Wood and Golden was erroneous because it was inconsistent and contradictory to the charge from Campbell and Douglas that immediately preceded it, which could have only misled and confused the jury.

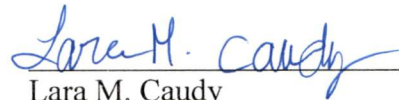
The PCR court correctly granted Petitioner relief. There was no dispute that Petitioner was entitled to an instruction on self-defense based on the evidence presented. The trial court gave an erroneous instruction that negated the correct self-defense instruction and misled the jury. Trial counsel admitted he should have objected to the erroneous instruction and that his failure to do so prejudiced Petitioner. Therefore, there was ample evidence to support the PCR court’s findings that counsel was ineffective for failing to object to the erroneous jury instruction and that Petitioner was prejudiced by counsel’s deficient performance.

Because there was evidence to support the PCR court’s findings and no error of law was made, the Court of Appeals erred by reversing the order of the PCR court. See Bailey, 392 S.C. at 432, 709 S.E.2d at 676. Respectfully, this Court should reverse the decision of the Court of Appeals and grant Petitioner a new trial.

CONCLUSION

Based on the foregoing argument, this Court should reverse Petitioner's conviction and sentence and remand for a new trial.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lara M. Caudy". The signature is written in a cursive style and is positioned above a horizontal line.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Bamberg County

James R. Barber, III, Circuit Court Judge

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S.C. SUPREME COURT

FRANKIE LEE BRYANT, III,

PETITIONER,

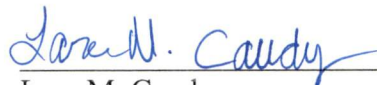
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner has been served upon Frankie Lee Bryant, #244187, at Allendale Correctional Institution, P.O. Box 1151, Highway 47, Fairfax, SC 29827, this 31st day of March, 2017.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 31st day of March, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.