

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

 ORIGINAL

—————  
Certiorari to Jasper County

RECEIVED

R. Lawton McIntosh, Circuit Court Judge

APR 24 2017

S.C. SUPREME COURT

ERIC DARIEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001685

—————  
PETITION FOR WRIT OF CERTIORARI  
—————

SUSAN B. HACKETT  
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**ISSUE PRESENTED**

By failing to object to portions of an audio recording of Petitioner's statement to police wherein a police officer improperly shifted the burden of proof to Petitioner and gave his lay opinion regarding how the shooting occurred, trial counsel provided ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution?

## STATEMENT

Around 7 p.m. on September 29, 2008, Montana Wilber, Jr., an officer with the Jasper County Sheriff's Office, and other deputies, responded to an emergency 911 call from Petitioner in reference to a shooting. App. 66, ll. 10-21; App. 69, ll. 19-21; App. 71, ll. 14-21; App. 72, ll. 13-14. In light of emergency medical personnel tending to Richard "Bubba" Furman, Wilber and his colleagues arrested Petitioner. App. 66, l. 22 – App. 67, l. 10.<sup>1</sup> Petitioner cooperated fully with the police and provided Wilber with his handgun. App. 67, ll. 11-14; App. 72, ll. 15-19. Petitioner also expressed his fear that Bubba's family members, who were present at the shooting, would harm him. App. 70, ll. 2-9.

Petitioner suffered head injuries in the confrontation with Bubba. App. 76, ll. 10-14. Therefore, the police transported him to the hospital for a medical evaluation prior to interrogating him at the police station. App. 76, ll. 18-24. The emergency room physician who treated Petitioner found bruises around Petitioner's face. App. 160, ll. 17-18. He also noted scalp and facial contusions. App. 160, l. 25 – App. 161, l. 4.

### ***Trial***

On December 16, 2008, a Jasper County grand jury indicted Petitioner for murder. App. 363-364. The state, represented by Steven H. Knight, called the case to trial before the Honorable Carmen T. Mullen and a jury on February 8-10, 2010. App. 1. Michael McCloskie represented Petitioner. App. 1. There was no question that Petitioner shot and killed Bubba. The only questions for the jury to resolve were whether the shooting was murder, voluntary manslaughter, or self-defense.

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<sup>1</sup> Richard "Bubba" Furman was pronounced dead at the scene. App. 80, ll. 2-17.

Jackson v. Denno hearing

Prior to the start of trial, the judge inquired about “any pretrial motions.” App. 34, ll. 17-18. The prosecutor indicated some concern with Petitioner’s statement, but explained that trial counsel did not “have any problems or any motions.” App. 36, ll. 13-17. Trial counsel explained his understanding that a hearing on the statement was “mandatory.” App. 36, ll. 18-20. However, trial counsel stated he had “no grounds to challenge the statement.” App. 38, ll. 12-13. Thereafter, Donald Hipp with the Jasper County Sheriff’s Office, testified regarding his interrogation of Petitioner on September 30, 2008. App. 39, l. 6 – App. 46, l. 18. The state sought to publish the audio recording for the judge during the hearing. App. 43, ll. 19-25. Trial counsel objected, explaining the hearing was to determine the voluntariness of the statement, “not ... the contents of the statement.” App. 44, ll. 5-13. Trial counsel assured the trial judge he had had an opportunity to review the recording and there was no need for the judge to hear the recording during the pre-trial proceeding. App. 44, ll. 14-25.

According to Hipp, Detective Jeff Crosby was present for the interrogation as well. App. 42, ll. 9-12. Also, Hipp explained the interrogation was audio-recorded. App. 42, ll. 13-19; State’s Trial Exhibit #2. After Hipp’s testimony, trial counsel explained that if Crosby were going to “testify to basically the same thing” as Hipp, then trial counsel had “no objection to proffering that testimony as such.” App. 46, l. 25 – App. 47, l. 2. The state indicated Crosby’s testimony would mirror Hipp’s, and the judge inquired directly of Crosby, who agreed that his testimony would be the same as Hipp’s. App. 47, ll. 3-10. Thereafter, trial counsel stated there were “no grounds of any substance for [him] to challenge the voluntary nature of this statement given by [Petitioner], and for that reason [he would not ] argue.” App. 47, ll. 13-16. The judge then found the statement voluntary and in compliance with the Constitution. App. 47, ll. 17-21.

*The state's case-in-chief*

Shakaria White and Bubba were in a romantic relationship. App. 82, ll. 16-25. Around 7 p.m., she was driving her car in which Bubba was a passenger. App. 83, ll. 6-16. Upon seeing Petitioner at his sister's home, Bubba instructed Shakaria to turn the car around. App. 83, ll. 20-23. Petitioner was going to see his son, Jamontay Darien, who lived with his mother, Tamika Furman, who was also Bubba's sister. App. 121, ll. 2-25; App. 173, ll. 2-11. Shakaria complied with Bubba's direction, stopping the car at Tamika's house. App. 83, l. 24 – App. 84, l. 4. Bubba "jumped out of the car and went straight at" Petitioner. App. 84, ll. 5-7.

Shakaria originally told the police that Bubba hit Petitioner immediately upon exiting the car, but she told the jury that Petitioner struck the first blow. App. 92, ll. 19-25. The two men argued and then started fighting. App. 84, ll. 8-17; App. 109, ll. 10-17; App. 122, ll. 20-22. The physical fight ended when Bubba got up and started walking toward Shakaria, but some words were still exchanged. App. 84, l. 25 – App. 85, l. 3; App. 123, ll. 8-10; App. 126, ll. 15-19. Although numerous people were trying to intercede, "nobody could get Bubba off of" Petitioner. App. 88, ll. 19-24; App. 93, l. 25 – App. 95, l. 7; App. 98, ll. 18-20; App. 122, l. 23 – App. 123, l. 6; App. 126, ll. 11-14. In fact, in the words of Shakaria, "nobody could do nothing with Bubba when he's mad," and he was "very upset" with Petitioner. App. 95, ll. 1-7; App. 123, ll. 10-11. Bubba told Shakaria to take him home and he wanted his gun. App. 85, ll. 2-3; App. 90, ll. 2-3; App. 98, ll. 21-22; App. 105, ll. 1-4; App. 128, ll. 2-6. Shakaria then heard shots "ring out." App. 85, ll. 4-5; App. 88, l. 25 – App. 89, l. 1.<sup>2</sup>

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<sup>2</sup> The evidence was conflicting on the number of gunshots. Shakaria White heard five. App. 88, l. 25 – App. 89, l. 1. Bubba's daughter, Y'Briana Furman, heard three. App. 102, ll. 3-4. Jamontay Darien referenced four. App. 110, ll.15-16; App. 111, ll. 8-12; App. 116, ll. 20-22. Tamika Furman heard three or four. App. 123, l. 23-24; App. 125, ll. 6-8.

The first shot missed Bubba. App. 98, ll. 22-24; App. 110, ll. 15-24; App. 124, ll. 8-10. Bubba then charged at and tackled Petitioner. App. 98, ll. 24 – App. 99, l. 8; App. 102, ll. 5-13; App. 105, ll. 10-14; App. 110, l. 25 – App. 111, l. 3; App. 115, ll. 12-15; App. 116, ll. 14-17; App. 124, ll. 11-25. The two men went down to the ground, where Bubba continued to punch Petitioner. App. 111, ll. 4-5; App. 115, ll. 16-18; App. 116, ll. 18-19; App. 125, ll. 15-22; App. 127, ll. 15-22. Petitioner shot approximately three more times while the men were struggling on the ground. App. 111, ll. 8-12; App. 116, ll. 20-22.<sup>3</sup>

When the prosecution called the law enforcement officers in order to introduce Petitioner's statement made subsequent to his arrest, trial counsel stipulated to the voluntariness of the statement. App. 145, l. 20 – App. 146, l. 5. Unsurprisingly, the statement was admitted without objection. App. 150, ll. 2-5. While the prosecutor was playing the audio tape of the interrogation, trial counsel objected "to anything about any kind of arrests or anything else." App. 150, ll. 13-14. The judge sustained the objection and instructed the jurors that "the last portion of that tape was improper" and "should not be before" them. App. 150, ll. 18-20. She ordered the jurors "not to consider it in any way" in their deliberations. App. 150, ll. 20-21. Trial counsel took no exceptions to the curative instructions and made no additional motions. App. 150, ll. 23-25.

### *The defense*

Leon Darien, Petitioner's cousin, saw Petitioner and Bubba fighting. App. 177, l. 6. Bubba "was on top of [Petitioner] punching [Petitioner] in the face and ramming his head into the ground." App. 177, ll. 7-10. Petitioner yelled for help. App. 177, ll. 10-11. Petitioner's mother lived nearby and she ran to her son's rescue. App. 177, ll. 11-12. Finally, Bubba got up.

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<sup>3</sup> According to the pathologist, the deceased suffered three gunshot wounds. All of which were potentially fatal. App. 135, ll. 13-15; App. 140, ll. 12-18; App. 141, ll. 18-25.

App. 177, l. 13. Petitioner was “dazed” and required Leon’s assistance in walking toward his mother’s house. App. 177, ll. 13-14; App. 181, ll. 3-5. Petitioner could not have gotten away from Bubba due to his dazed state. App. 180, ll. 18-20. Petitioner was shaking and unsteady on his feet. App. 182, ll. 1-9.

Leon heard Bubba tell Shakaria to go get his gun. App. 177, ll. 17-23. Leon next saw gunfire, but the shot missed Bubba. App. 178, ll. 18-20; App. 183, ll. 15-17. Bubba then “rushed” Petitioner. App. 178, ll. 20-21; App. 184, ll. 4-18. Leon saw gunfire again, and Bubba and Petitioner fell to the ground. App. 178, l. 23 – App. 179, l. 2. According to Leon, the “gunshots were as Bubba attacked [Petitioner], and as both of them [were] falling.” App. 179, ll. 15-18; see also App. 184, ll. 21-22.

#### *Verdict & sentencing*

The jury acquitted Petitioner of murder, but found him guilty of the lesser-included offense of voluntary manslaughter. App. 239, ll. 14-22. Judge Mullen sentenced Petitioner to eighteen years’ imprisonment. App. 249, ll. 3-6; App. 365. Thereafter, Petitioner, through counsel, filed a motion to reconsider his sentence. App. 251. On June 8, 2010, Judge Mullen heard arguments on the motion. App. 252. At the conclusion of the hearing, Judge Mullen reduced Petitioner’s sentence to fifteen years’ imprisonment. App. 260, ll. 19-20; App. 365.

#### *Direct appeal*

Petitioner filed a notice of appeal and was represented by Robert M. Dudek, Chief Appellate Defender, on appeal. App. 263. Appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on December 13, 2011. App. 263-276. On appeal, Petitioner challenged the trial judge’s refusal to “direct a verdict of acquittal as a matter of law based on self-defense where it was undisputed the decedent attacked [Petitioner] and injured him, and

[Petitioner] shot him in self-defense.” App. 263-276. On May 16, 2012, the Court of Appeals dismissed Petitioner’s appeal in an unpublished opinion. App. 277-278; State v. Darien, 2012-UP-307 (S.C. Ct. App. filed May 16, 2012). Remittitur was issued on June 5, 2012. App. 279-280.

***Post-conviction relief hearing***

On February 21, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 281-290. The matter proceeded to an evidentiary hearing on March 3, 2016, before the Honorable R. Lawton McIntosh. App. 299. J. Rutledge Johnson represented the state, and James K. Falk represented Petitioner. App. 300.

Trial counsel recalled receiving the audio recorded statement given by Petitioner in the discovery materials and recalled reviewing the statement “[n]umerous times.” App. 304, ll. 3-10. Although trial counsel was aware the recording contained information about Petitioner’s prior criminal record, trial counsel did not object to those portions until after the statement was played for the jury. App. 312, l. 20 – App. 313, l. 10.

During the PCR hearing, portions of the audio recording were played for the PCR judge. State’s Trial Exhibit #2. On the tape, an officer stated, “You don’t have the right to take a man’s life,” and “You shot him in the back.” App. 317, ll. 13-16; App. 321, ll. 11-13. The officer also opined that Petitioner was “too close for that shot to have been fired in self-defense.” App. 317, ll. 17-21. Additionally, the officer said, “I’m not the one that was out there, I’m not the one that has to prove something.” App. 319, ll. 4-7; App. 321, ll. 18-19; App. 341, ll. 3-6. Trial counsel did not object these statements, request a mistrial, or request a curative instruction after the jury heard the tape. App. 322, ll. 11-22. Trial counsel candidly admitted there was no trial strategy behind those decisions. App. 322, ll. 23-24. Trial counsel also candidly admitted that he should

have objected to the statements made by the police officer during the interrogation. App. 324, ll. 8-11.

At the conclusion of the hearing, PCR counsel cited State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015) to support his contention that trial counsel erred in failing to object to the officer's statements. App. 334, l. 7 – App. 335, l. 8. PCR counsel argued the officer's statements shifted the burden of proof to Petitioner and allowed the jury to hear the officer's opinions on matters the jury would not hear otherwise. App. 319, ll. 5-7; App. 319, ll. 20-22. The judge and the state sought to distinguish Brewer, supra, by explaining the statement at issue in Petitioner's case regarding burden-shifting occurred once, but the statement at issue in Brewer was repeated. App. 335, ll. 9-13; App. 341, ll. 15-19. PCR counsel argued that to the extent the number of times the burden-shifting statement was heard by the jury, that factor would have to be weighed against the evidence in the case. App. 335, ll. 14-21. PCR counsel noted this was a close case involving a claim of self-defense. App. 335, ll. 14-21. PCR counsel argued the officer's statements were prejudicial and burden-shifting as the officer's opinions were matters for the state to prove and the jury to find. App. 337, ll. 8-18. Instead, the jury was permitted to hear testimony from a witness that did not have firsthand knowledge as to how the person was shot and opined regarding the circumstances of the shooting and the applicable law. App. 337, ll. 17-22.

PCR counsel also noted the distinction, when evaluating ineffective assistance of counsel claims, in reviewing a witness saying something improper, such as hearsay, and counsel objecting and when counsel had an opportunity to review the audio tape numerous times before trial and posing no objection to the audio prior to trial or during the playing of the tape. App. 343, ll. 1-10. As counsel put it, there was "no excuse for that coming in." App. 343, ll. 5-6.

Counsel for the state admitted this was a close case: “And once you read it, it is a very close call. That’s why Judge Mullen then goes and knocks the sentence down from 18 to 15. It is a very close call, voluntary manslaughter versus self-defense. I completely admit that, Your Honor. This is a close case.” App. 342, ll. 1-6. However, the state argued the officer’s statements during the interrogation had to be viewed “in context with the entire trial, not in isolation.” App. 342, ll. 7-9; App. 342, ll. 20-23.

***Order denying relief***

By an order dated May 17, 2016, Judge McIntosh denied Petitioner relief from his conviction and sentence. App. 350-361. Finding trial counsel’s testimony credible, the PCR judge noted that trial counsel “admitted he did not consider redacting the police statements before the trial, but should have.” App. 354; App. 356. The order explained that on the tape, Petitioner’s prior jail time was discussed. App. 354. Although trial counsel failed to move to exclude those portions or redact those portions prior trial, trial counsel requested and received a curative instruction during the trial. App. 354-355. Additionally, the tape included a police officer “saying that he had nothing to prove and talking about the shooting” of Bubba. App. 355. The judge noted trial counsel “testified the biggest issue concerning [Petitioner]’s statements to the police was the police’s statements to Petitioner.” App. 355. “Specifically, one police officer stated to [Petitioner], ‘you do not have the right to take someone else’s life’ and ‘I have nothing to prove ... The court has to decide those things.’” App. 355. According to the order, counsel admitted he did not ask for curative instructions or move for a mistrial regarding those statements. App. 355. Importantly, counsel “stated he did not have a trial strategy as to the statements.” App. 355.

After citing the applicable law for reviewing a trial lawyer's conduct for ineffective assistance of counsel, the PCR judge held trial counsel "effective represented [Petitioner] concerning his statements to law enforcement." App. 358. The judge explained again that trial counsel "testified that he should have objected to the statements prior to them being published to the jury," but trial counsel obtained a curative instruction upon request. App. 358. The order determined trial counsel's "decision to not challenge [Petitioner]'s statement" was based on information provided by Petitioner. App. 358-359. Thus, the court reasoned, trial counsel's actions could not be challenged as unreasonable thereafter. App. 359. Noting that a curative instruction is deemed to have cured any alleged error, the PCR court noted again that trial counsel asked for and received a curative instruction concerning the statements made by the police officer during the interrogation. App. 359. The Court concluded Petitioner failed to meet his burden of proof. App. 359.

Receiving notice of the order on July 22, 2016, Petitioner's counsel filed served a notice of appeal on August 10, 2016. This petition for writ of certiorari follows.

## ARGUMENT

By failing to object to portions of an audio recording of Petitioner's statement to police wherein a police officer improperly shifted the burden of proof to Petitioner and gave his lay opinion regarding how the shooting occurred, trial counsel provided ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Id. at 686.

To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Id. at 688.

Concerning prejudice, “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Rather, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. Specifically, on the prejudice prong, the question to ask is “whether there is a reasonable probability that, absent the errors, the fact finding would have had a reasonable doubt respecting guilt.” Id. (emphasis added). The United States Supreme Court

specifically ruled that “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Id. Moreover, the Court held that:

The ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

Id. at 696.

Thus, in a PCR action, the applicant must prove by a preponderance of the evidence that (1) counsel’s performance was deficient under prevailing professional norms and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.

Id. at 695.

### ***Burden-shifting***

In State v. Brewer, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015), this Court acknowledged “the propriety of law enforcement interrogation techniques, including misrepresenting the existing and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily. This Court explained that “[s]uch matters are typically examined *in camera* when the trial court is making a preliminary determination as to the admission of a confession.” Id. “But such evidence will rarely be proper for a jury’s consideration.” Id. at 406, 768 S.E.2d at 659.

During Brewer’s interrogation, the “investigators frequently referenced *and quoted* many purported eyewitnesses to Brewer shooting both victims. This evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer’s guilt to all charges.” Id. at 406-407, 768 S.E.2d at 659 (emphasis in original). This Court implored trial courts and lawyers to exercise “caution” “in the admission of such evidence to ensure that all

out-of-court statements are either ‘admissible for a valid nonhearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and constitutional proscriptions against the admission of hearsay.’” Id. at 407-408, 768 S.E.2d at 659 (quoting State v. Miller, 676 S.E.2d 546, 556 (2009)). This Court reminded trial courts that “‘the questions police pose during suspect interviews may contain false accusations, inherently unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court.’” Id. at 408, 768 S.E.2d at 659 (quoting Miller, supra). This Court held the officer’s insistence that Brewer prove his innocence during the interrogation video had “no place before the jury.” Id. (emphasis in original). This Court found it “chilling” to have “to remind the state that an accused is presumed innocent and that the state has the burden to prove guilt beyond a reasonable doubt.” Id. (emphasis added).

In the audio recording of Petitioner’s interrogation, an officer challenged Petitioner’s rendition of the facts – self-defense – by telling Petitioner that the officer did not have anything to prove. Specifically, the officer juxtaposed himself – someone who was not at the scene at the time of the shooting – with Petitioner – someone who was at the scene at the time of the shooting. The officer was not the one at the scene, and therefore, the officer was not the one who had to prove anything. The obvious implication was that Petitioner was at the scene and was the person who *had to prove* something. The officer’s statement shifted the burden of proof to Petitioner. The officer was the person who had to prove the case. As a representative of the state, it was the officer’s duty to marshal the evidence in the case. Petitioner had no burden whatsoever; yet, the officer told him that he did. The officer’s improper statement regarding the burden of proof conveyed the improper burden to the jury.

### ***Improper lay opinion***

Pursuant to the South Carolina Rules of Evidence, a non-expert witness may offer opinion testimony in very limited circumstances.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training.

Rule 701, SCRE.

On the tape, an officer stated, "You don't have the right to take a man's life," "You shot him in the back," and opined that Petitioner was "too close for that shot to have been fired in self-defense." App. 317, ll. 17-21. In essence, the officer was offering his opinion regarding whether Petitioner acted in self-defense. His statements were not rationally based on his perception, but were based upon his use of a technique to alter Petitioner's "confession" or attempt to get Petitioner to change his story. The officer's opinion regarding whether the shooting was self-defense was not helpful to a clear understanding of the testimony or a determination of a fact in issue. The officer lacked in special knowledge, skill, experience, or training to offer such an opinion. There was no evidence to suggest he had any experience in crime scene reconstruction or had taken the necessary steps in order to reconstruct the crime scene. Whether Petitioner had the right to take a man's life and whether Petitioner was "too close" for the shooting to be in self-defense were matters for the jury.

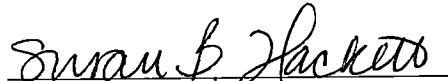
Trial counsel had the audio recording prior to trial and had reviewed it numerous times. He was well aware of what the tape contained. Nevertheless, trial counsel failed to move prior to trial to exclude any portions of the tape – even the portions regarding Petitioner's prior criminal record. It was only during the trial that counsel objected to those portions. Trial counsel

performed deficiently by failing to avail himself of the opportunity to move to redact the objectionable portions of the tape. Not only did trial counsel failed to move to redact prior to trial, but he failed to pose any objection when the tape was played in open court before the jury to the improper burden-shifting and lay opinion.

By all accounts – including the state’s account at the PCR hearing – this was a close case. The state charged Petitioner with murder, but Petitioner claimed self-defense. In light of the evidence, the jury was instructed with the offenses of murder, voluntary manslaughter, and self-defense. The jury acquitted Petitioner of murder, but found him guilty of self-defense. Trial counsel’s deficient performance in permitting the jurors to hear the officer improperly shifting the burden of proof and providing improper lay opinion testimony regarding whether the shooting was the result of self-defense was prejudicial to Petitioner. Due to the evidence in the case, the admitted “close call” between manslaughter and self-defense, there is a reasonable probability that the result of the trial would have been different had trial counsel moved to exclude the objectionable portions of the audio recorded statement.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. In the event this Court grants the petition and dispenses with further briefing, Petitioner respectfully requests this Court reverse the PCR court, find trial counsel rendered ineffective assistance, and order a new trial.

  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Jasper County

R. Lawton McIntosh, Circuit Court Judge  
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ERIC DARIEN,

PETITIONER

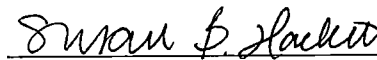
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STATE OF SOUTH CAROLINA,

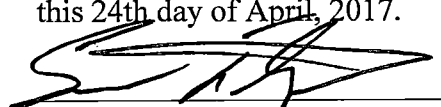
RESPONDENT

—————  
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 Ruston Neely, 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 Eric Darien, #275549, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 24th day of April, 2017.

  
\_\_\_\_\_  
Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of April, 2017.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.