

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

G. Thomas Cooper, Circuit Court Judge

DOUGLAS D. GREGG,

RECEIVED
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S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000769

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in dissuading petitioner from testifying in his defense at trial on behalf of his self-defense claim.

STATEMENT

Petitioner Douglas D. Gregg, III, was convicted of kidnapping, possession of a weapon during a violent crime, larceny, grand larceny, murder, and armed robbery during the December 2012 term of the Darlington County General Sessions Court before Judge Thomas Russo. Petitioner received a life without parole sentence and a sentence of seventy-five years imprisonment. Attorneys Richard Jones, Julie Wooten, and Christy Wise represented petitioner at trial, and Assistant Solicitors John Woodrow Holt and Patti Parker appeared on behalf of the state. Petitioner appealed, but then withdrew his appeal.

On August 29, 2012, petitioner filed a PCR application alleging ineffective assistance of trial counsel in his case. A PCR hearing was convened on July 20, 2016, at the Darlington County General Sessions Court before Judge G. Thomas Cooper. Petitioner was present at the hearing and represented by Tristan M. Shaffer, and Assistant Attorney General Jessica Kinard appeared on behalf of the state.

On February 17, 2017, Judge Cooper issued an Order of Dismissal in the case. Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in dissuading petitioner from testifying in his defense at trial in support of his self-defense claim in the case.

At trial, Druscilla Suggs Hunter testified that she arrived at Levi Gregg's house (in Darlington County) on the afternoon on June 12, 2011, pursuant to their agreement to eat dinner together. Hunter explained that when she arrived at the house between 3 to 4 pm, petitioner, who lived there also, opened the door and displayed a knife. Upon entering, she saw Levi Gregg laid out flat on the floor face down and realized that he (Levi Gregg) had been stabbed in the back.¹ Immediately thereafter, petitioner told her to take off her clothes and put on a robe. Minutes later, they both got in a car. As they were driving, Hunter stated that she jumped out and ran to the closest house should could find. Ella Graham was the good Samaritan neighbor that allowed her to enter and take refuge there. At that point, they placed a call to local police to report the events. App. 138, l. 17 – App. 142, l. 14.

Then, around 4:00 pm on that same date, which was shortly after the Hunter incidents, cashier Alberta Deloris Tigernia was working at the Markette Store in Society hill and saw a man whom she knew as petitioner enter the store. Tigernia fled while her coworker Miranda Wilds stayed inside the store. Wilds stated that she opened the cash register pursuant to the instructions given by this man (who she identified as petitioner at trial) before fleeing. Tr. 165, l. 22 – p. 175, l. 2. The store surveillance tape captured the exchanges that transpired between petitioner, Wilds and Tigernia.

¹ Levi Gregg died from bleeding due to sixteen stab wounds. App. 161, l. 3-10.

Petitioner was arrested by police on the same day that all of these incidents occurred. A knife was found in a car believed to have been driven by petitioner when the crimes were committed. App. 221, l. 1-6. After arrest, petitioner gave a statement (video as state's exhibit #3) in the case. App. 295, l.14 – p.298, l.12.

Petitioner did not testify at trial; however, based on his statement, trial counsel argued self-defense (regarding Levi Gregg's death) during closing arguments. According to what was revealed in the case, Levi wanted petitioner to leave before his girlfriend (Hunter) came over. Then, Levi Gregg picked up a knife and began to fight petitioner. App. 342, l. 1 – App. 345, l. 13. Note that the trial judge gave a self-defense charge to the jury. App. 369, l. 7 – App. 371, l. 21. Note further that the stabbing of Levi Gregg was not witnessed by anyone other than petitioner. Therefore, petitioner's position was that his testimony at trial was imperative in order to support his self-defense claim.

Apparently, there had been a scuffle between petitioner and the deceased. App. 313, l. 7-

8. Defense counsel made the following argument for the requested self-defense jury charge:

On behalf of the defendant, we would ask for a self-defense charge...It is a very last piece of evidence in the defendant's interview, and we have to listen very closely, but he starts off by telling Investigator Hodges that he and Mr. Gregg --- Mr. Levi Gregg, had an argument about him leaving. And then he goes on to say, that they began pushing and shoving. And then he's got his left arm in the video --- he points this part of his arm toward the camera. He begins pulling a bandage off, and he says, Levi nicked me with the knife. He pulls it off and you can't see it very well, but he has a wound on the left ---this part of his left arm. Then, a little bit later as he is talking about Druscilla Hunter-Suggs coming up, he says that he told her that me and Levi got into it. Then I believe, almost towards the end, he tells Investigator Hodges again that he and Levi got into a tussle. We feel that those, at least four phrases, if I counted correctly...ive the defendant...the defendant the opportunity to ask the Court for a self-defense charge. App 312, lines 2-21.

During the PCR hearing, petitioner testified that counsel advised him not to testify at trial. App. 415, l. 1-14. Petitioner testified further at the PCR hearing that if he had testified at trial, he would have been able to explain his self-defense claim as follows:

The deceased and I got into a confrontation. The deceased told me to leave. And I told him I was. When I got ready to leave the deceased came back in and he had a knife. When I turned around he was holding the knife up, I threw my arm up like this and the knife hit me in my arm. When it hit me in my arm, I took the knife from him. We had a struggle and he ended up being deceased, end up dying because of the struggle that we had. App. 411, lines 3-10.

In addition, petitioner testified as follows:

Q. Okay. Okay. Now, you have a scar on your arm, is that correct?

A. Yes, sir.

Q. Is that from this incident?

A. Sir?

Q. Did you point that scar out to Mr. Jones?

A. Before then, I pointed out to the first attorney.
App. 431, l. 1-9.

Q. You didn't testify about your version of events, correct?

A. That's correct.

Q. It was only admitted through your statement, correct?

A. That's correct.

Q. Is there anything you would've told the jury in addition to what you told the cops concerning self-defense?

A. I would've told them what happened and what led up to it, yes, sir, to the self-defense, yes, sir.

Q. Would you have shown them a picture of your arm or showed them your arm?

A. Yes, sir.
App. 423, l. 17 – App. 424, l. 7.

Trial counsel testified at the PCR hearing and explained that “[they] talked a great deal about [petitioner] testifying,” but that “[petitioner] ha[d] a terrible record,” and the benefit of testifying “would have been greatly outweighed by the negativity of his record.” App. 429, lines 1-21; App. 436, l. 18 – App. 437, l. 7.

The PCR judge ruled that counsel’s performance did not fall below the objective standard of reasonableness and rejected petitioner’s claim of counsel’s ineffective assistance of counsel. App. 445.

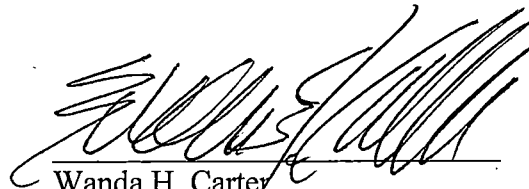
Although, petitioner would have been examined regarding his prior record had he testified; nonetheless, the use of petitioner’s testimony to corroborate the self-defense claim, which was introduced to the jury via his statement, would have been helpful to the defense. Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain in effect the evidence in a case. State v. Stroman, 281 S.C. 506, 316 S.E.2d 395 (1984). Clearly, petitioner had a right to testify and use his testimony to corroborate his self-defense claim.

Petitioner’s right to testify at trial should not have been stifled by counsel. A defendant in a criminal case has the right to take the witness stand and testify in his or her behalf under the due process clause of the Fourteenth Amendment, which guarantees that no one shall be deprived of liberty without due process of law, and under the compulsory process clause of the Sixth Amendment that grants the defendant the right to call witnesses, and under the Fifth Amendment’s privilege against self-incrimination. State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013), citing to Rock v. Arkansas, 483 U.S. 44 (1987), and Faretta v. California, 422 U.S.

806 (1975). In Rivera, the Court reversed because the defendant's was denied his right to testify in his defense at trial (despite the position that “**preventing [the defendant] from testifying may have been an advantageous strategic decision ...[because this position]..had no basis in the law]**” and the denial of the right to testify at trial could not have been harmless as it was considered structural error. In addition, a defendant has a right to present his defense. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (2001).

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable G. Thomas Cooper, Circuit Court Judge

DOUGLAS D. GREGG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

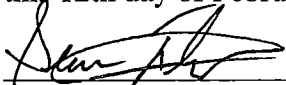
CERTIFICATE OF SERVICE

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 Johnny Ellis James, Jr., 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 Douglas D. Gregg, #137038, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 12th day of February, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 12th day of February, 2018.



Notary Public for South Carolina (L.S)
My Commission Expires: 10/30/2022.