

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Jasper County

Honorable J. Cordell Maddox, Circuit Court Judge

RECEIVED

MAR 14 2010

TARA MARIE WEBER,

PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001677

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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Trial counsel erred in waiving the offer of a self-defense charge, which the trial judge ruled was applicable and supported by the facts in the case, per the strategy that the defense theory of accident was the only defense in the case, and that a self-defense claim would have been contradictory and in effect nullified petitioner’s accident argument, because the deceased’s decision to drag petitioner out of another man’s bedroom and argue with her led petitioner to respond by stabbing back in self-defense.3

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ISSUE PRESENTED

Trial counsel erred in waiving the offer of a self-defense charge, which the trial judge ruled was applicable and supported by the facts in the case, per the strategy that the defense theory of accident was the only defense in the case, and that a self-defense claim would have been contradictory and in effect nullified petitioner's accident argument, because the deceased's decision to drag petitioner out of another man's bedroom and argue with her led petitioner to respond by stabbing back in self-defense.

STATEMENT

Petitioner Tara Marie Weber was convicted of voluntary manslaughter during the September 2011 term of the Jasper County General Sessions Court before Judge Michael G. Nettles. Robert Hughes represented petitioner at trial, and Assistant Solicitors Robert Ferguson and Tameka Legette appeared on behalf of the state. Judge Nettles sentenced petitioner to imprisonment for a period of twenty three years. App. 1-339. Petitioner appealed, but her conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Weber, Unpublished Opinion No. 2013-UP-42 (S.C. Ct. App. January 30, 2013). Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense represented petitioner on direct appeal.

On May 6, 2013, petitioner filed a PCR application with the Jasper County Office of the Clerk of Court. App. 341-347. The respondent filed a return dated June 5, 2014, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 348-351.

A PCR hearing was convened on July 30, 2014, at the Jasper County Courthouse before Judge J. Cordell Maddox, Junior. App. 353-395. Petitioner was present at the hearing and represented by Tristan M. Shaffer, and Assistant Attorney General Ashleigh R. Wilson appeared at the hearing on behalf of the state. On April 25, 2017, Judge Maddox issued an Order of Dismissal in response to petitioner's PCR allegations of ineffective assistance of counsel in the case. App. 396-403.

Petitioner appealed Judge Maddox's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in waiving the offer of a self-defense charge, which the trial judge ruled was applicable and supported by the facts in the case, per the strategy that the defense theory of accident was the only defense in the case, and that a self-defense claim would have been contradictory and in effect nullified petitioner's accident argument, because the deceased's decision to drag petitioner out of another man's bedroom and argue with her led petitioner to respond by stabbing back in self-defense.

Kyle Way died from a stab wound to his chest on December 31, 2010, when petitioner reacted after Way dragged her away from another man's bedroom and argued with her.

At trial, Officer Kevin Smith stated he was dispatched to the mobile home park crime scene on the night of December 31, 2010, after hearing over the radio that "the sheriff's office received a call about an accidental stabbing." App. 142, l. 20 – App. 143, l. 10. Officer Smith stated that petitioner approached him after he arrived at the trailer where the deceased lay and received a voluntary summary from her (petitioner) as to what happened as follows:

She said that she was in the kitchen, and she'd been holding a knife, and she was planning to cut herself with the knife; and [the deceased] has come behind her to get the knife, and she turned around; and in the process of turning around, she said that she had accidentally stabbed him. App. 144, l. 24 – App. 145, l. 3.

Also, petitioner gave a statement recorded on audio video restating this explanation of how the stabbing occurred. See state's exhibit #3. App. 227, l. 14 – p. 230, l. 6.

Joshua Ayers and Kimberly Powell were present at the crime scene and testified that they overheard petitioner and the deceased talking and that they heard petitioner say "if you don't leave me alone I'm going to stab you." App. 153, l. 15 – App. 156, l. 23; App. 162, l. 20 – App. 166, l. 7.

On the night of the stabbing, the deceased found petitioner in an abandoned trailer with Dustin Roberts. Roberts testified at trial and admitted that he and petitioner were engaged in sexual relations in the vacant trailer on that night, and also that the deceased “came into the trailer [they] were in and he grabbed [petitioner] and drug (sic) her our and [that he] heard them arguing. App. 170, l. 2 – App. 172, l. 19. Roberts stated that petitioner and the deceased had a son and that petitioner had another child that might have belonged to him. App. 173, l. 18 – App. 175, l. 2.

The defense theory was that petitioner accidentally stabbed the deceased. However, petitioner did not testify at trial. Although self-defense was not charged by the trial judge; nonetheless, the trial judge was willing to charge self-defense based on what the trial judge stated was a “snippet of testimony that was – seemed to indicate that – just a bare snippet of testimony that would --- might could substantiate a self-defense charge.” App. 13-15. The trial judge’s remarks in reference to self-defense follow:

There is a.....was a snippet of testimony that was....just a bare snippet of testimony that would might could substantiate a self-defense charge...[but] in chambers...we (counsel) came to the conclusion that it was not a theory of the defendant that it was self-defense....that it was an accidental incident that took place...and more importantly, it’s not consistent with what the defendant said, who was the only witness to the altercation....and self-defense [will not be charged]...although it was discussed based on this snibbit of testimony. App. 298, lines 13-25.

During the PCR hearing held in the case, petitioner testified that counsel informed her that he would argue the defense of accident at trial. App. 381, l. 9-18. Trial counsel testified at the PCR hearing and stated that the altercation began after petitioner was found by the deceased in the company of another man and that she “took a knife and stabbed him,” and that appellant stated consistently that it was an accident. App. 359, l. 6-24; App. 360, l. 16-23; App. 361, l. 22-

23. Counsel added that he did not agree to the offer of a self-defense charge because that would have been admitting that “it wasn’t an accident” and that he “did not want the jury to have the idea that [petitioner] did it on purpose.” App. 362, l. 6 – App. 363, l. 3; App. 374, l. 2-4. However, counsel admitted that dragging petitioner away from another man’s embrace was aggression in terms of self-defense. App. 373, l. 13-20; App. 378, l. 13 – App. 379, l. 4.

PCR counsel’s argument regarding counsel’s error in not accepting a self-defense charge follows:

I don’t believe it’s a reasonable trial strategy to say that we’re not – well, I’m not going to give the jury another out to not convict the client. You know, basically you can argue -- I mean, clearly you cannot – you don’t have to argue everything that’s charged by the judge but the law requires that if there’s evidence of an offense, any evidence to support it which clearly, I mean, Judge Nettles even found and put on the record that there was some evidence to support it, based off of that, you know, it should have been charged to the jury. There’s not reasonable basis for saying, Well, let’s not give her another possible defense. You know, the State has to disprove self-defense beyond a reasonable doubt if there’s any evidence to support it. App. 388, l. 17 – App. 389, l. 5. Your Honor, I do believe that she was prejudiced by this or at least there’s a reasonable possibility that some juror could find that the state failed to disprove self-defense beyond a reasonable doubt. App. 389, l. 24 – App. 390, l. 2.

PCR counsel advised the PCR judge that the “primary issue..is the fact that [trial counsel] waived the self-defense jury instruction.” App. 357, l. 7-10. The PCR judge ruled that petitioner failed to satisfy her burden of proving that counsel erred in failing to accept a self-defense instruction or that petitioner was prejudiced by not receiving a self-defense instruction. App. 398-400.

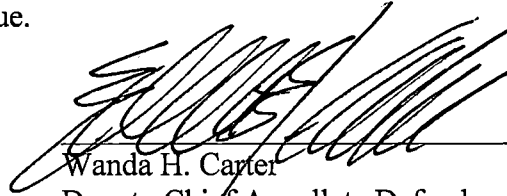
To establish self-defense, one must show that the defendant was without fault in bringing on the difficulty and that he believed he was in actual imminent danger of losing his life or

sustaining serious bodily injury, which under the circumstances a reasonably prudent person would also have believed, and that the defendant had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Here, the deceased was angry after finding petitioner with another man and he dragged petitioner away from the other man and argued with her to the extent that petitioner felt he was harassing her because she asked him to leave her alone; and then the deceased came behind her and said give me the knife, and when she turned around the stabbing occurred. The deceased had been aggressive the entire time and she then used a knife; and furthermore, note that according to the record there was evidence that the deceased reached towards petitioner as he asked for the knife and thereafter the stabbing happened. App. 181, l. 20 – App. 182, l. 9; App. 144, l. 24 – App. 145, l. 3; App. 181, l. 20 – App. 182, l. 9; App. 172, l. 3-12.

In the case at bar, the evidence supported a self-defense charge. If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Wigington, 375 S.C. 25, 649 S.E.2d 185 (S.C. Ct. App. 2007). In addition, the state has the burden of disproving self-defense. State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 248 (2002). Trial counsel's denial of the trial judge's offer to charge self-defense constituted deficient representation in violation of the Sixth Amendment (see Strickland v. Washington, 466 U.S. 668 (1984)), and but for the error, a reasonable probability exists that the outcome of petitioner's trial would have been different. A jury may believe or disbelieve evidence in whole or in part. State v. Johnson, 236 S.C. 207, 113 S.E.2d 540 (1960). Thus, if the jury disbelieved the defense of accident, petitioner might have received an acquittal on the self-defense claim.

CONCLUSION

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

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of March, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Cordell Maddox, Circuit Court Judge

TARA MARIE WEBER,

PETITIONER

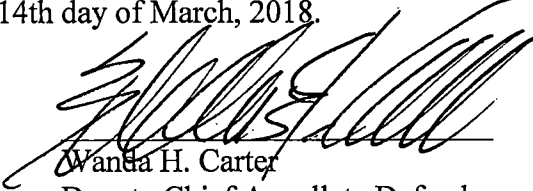
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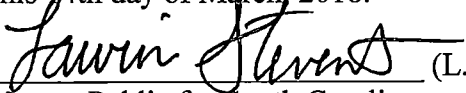
RESPONDENT

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 Christian Saville, 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 Tara Marie Weber, #347905, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 14th day of March, 2018.


Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 14th day of March, 2018.



Notary Public for South Carolina (L.S)
My Commission Expires: July 5, 2027.