

Daniel Shearouse  
Clerk of Court

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OCT 26 2017

S.C. SUPREME COURT

Please file with the Court  
and forward a copy to:  
(Clockstamped, Dated.)

Robert M. Pachek  
Appellate Defender  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post office Box 11589  
Columbia S.C. 29211

And:

Curtis Nealey 337988  
LCI F-5-C-198  
990 Wisacky Hwy  
Bishopville SC 29010

Postage inclosed.

Thanks Curtis Nealey

October 23, 2017

Robert M. Pachek  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

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Re.: Curtis Ray Nealey v. State of South Carolina S.C. SUPREME COURT

Dear Mr. Pachek:

Will you PLEASE BE ADVISED and TAKE NOTICE that I am writing you in regards to the above referenced matter.

I have reviewed the Brief of the Respondent for the Writ of Certiorari and have concluded that several issues NEEDS to be corrected by way of a Reply Brief of Petitioner.

The corrections is as follows:

\* In the Statement of Facts: 'Perkins Statement, App. Page 107-108, Line 20 - motive made up. He was asking me was I going to come up with him to talk to the Solicitor about the Criminal Domestic Violence charges and I told him "no". My attorney clarified the reason.

\* Tonya Little Trial Statement, App. Page 67-69, Line 25. She is talking about the charges were related to a incident with Ms. Perkins' Ex-Husband or Boyfriend. She did not have the power to drop the charges because she was not the alleged victim in that case.

\* Conclusion, the State let Perkins imply that the Defendant had pending Criminal Domestic Violence charges the next day to make up a motive as to why I supposedly done the present crimes. The Record clearly reflect those incorrect statements.

\* On Page 4 of the Brief of Respondent, the State implied that a statement Perkins made was facts not supported by any medical records. The Record clearly reflects that Perkins sustained no injuries to her wrist. However, the Respondent applied Perkins statement, App. Page 12-19, Line 10, "He broke my wrist at the house". Witness James C. Balvich stated on App. Page 176-178, Line 20, that Perkins sustained no injuries from a so called broken wrist or assault. That all injuries were consistent with falling from a motorcycle. The Respondent is relying on this false testimony, of which the Record clearly reflects such. Please correct that as the Respondent is clearly bolstering their case with these false testimony.

Mr. Robert M. Pachek  
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\* In the Jury Instructions on Page 294, line 23 to Page 295, line 10, reads in pertinent part, 'a deadly weapon is any article or instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon, depends on the facts and circumstances of each case. I tell you that a deadly weapon may be any article or instrument that is likely to produce death or great bodily harm. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be considered.'

\* On Page 10 of the Brief of Respondent, the Respondent misquoted the Instructions given to the jury in the Petitioner's case. The Respondent even excluded the knife but stated that a vase and motorcycle could be considered deadly weapons, to say. See Page 9 of Brief of Respondent. The Respondent put its own version of the instructions and what the Trial Court instructed to the jury. The Trial Court instructed the jury that anything they deem a weapon can be considered as inferred malice.

\* The Respondent can't be sure how the jury determined the instruction given by the Trial Court and implied that Petitioner's case does not fit the Belcher guidelines. Belcher states that any case related to Assault and Battery with the Intent to Kill that evidence is put forth to reduce the impact, the instruction should not be included in the jury charge. However, the charge to the jury in the Petitioner's case implied that the Petitioner was guilty if the Petitioner was found guilty of possession of weapon.

\* Tonya Little Post-Conviction Relief testimony on App. Page 410, lines 12-21, admitted to not knowing about the Belcher case at the time of Petitioner's trial. However, a month after the Petitioner's trial, requested the instruction be excluded in the case. Admission of not knowing about pending case laws renders counsel to be ineffective. Find a case supporting that and correct this in reply.

\* On Page 12 of the Brief of Petitioner, shows that the Order of Dismissal the PCR Court ruled that counsel was not ineffective for failing to challenge the Trial Courts improper charge on the inferred malice instruction on App. Page 466. The PCR Court simply found that the Petitioner was not prejudiced by the improper charge because overwhelming evidence of his guilt was present, besides the Belcher analysis. Was there malice besides the part of Possession of a Weapon. The PCR Court was wrong in its Order of Dismissal.

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\* In the Brief of Respondent, on Page 10, there is a footnote that applied that the Order of Dismissal found that Trial Counsel was ineffective, but no prejudice resulted and that the Petitioner is arguing the opposite in the Brief of Petitioner, of which is not true and is trying to confuse the Court in to believing their theories. See Page 14 of Brief of Petitioner. However, the Respondent states the following in its Brief of Respondent: 'The PCR Court specifically found that "[Petitioner] failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of the Applicant", thus failing to satisfy the first prong of Strickland test. App. P. 466. Petitioner argues the opposite on Page 16 of its brief stating that the PCR Court ruled that counsel's performance was deficient for failing to object to the Trial Court's improper inferred malice instruction. App. 466. BOP p.16. That is simply incorrect." There is nothing on page 16 of the Brief of Petitioner that indicates this alleged theory given by the Respondent, nor is page 16 a depiction of this misstatement of facts. The Respondent's attempt to sway the opinion of the Court, is clearly unethical and unprofessional in its entirety.

As you can see from the above, there consist of several clear and convincing errors and misstatement of facts that needs to be corrected. Please understand that my life is swaying in the balance of these mistakes and needs to be clarified with a Reply Brief, so that the Court gets the correct applications of facts in this case to determine whether or not the Belcher analysis apply in this particular case.

If you believe that a Reply is not needed, please notify me in writing as soon as possible, before the deadline to file such Reply.

I would like to thank you in advance for your attention and assistance in this matter. I do, however, look forward to hearing from you or your Office in these regards.

With the Kindest Regards. I so Remain,

Sincerely,

*Curtis Ray Nealey*

Curtis Ray Nealey

CRN/htiii  
CC: Daniel E. Shearouse  
File

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