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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
William H. Seals Jr., Circuit Court Judge

JEROME CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2018-000464

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON APPEAL

- I. Did the PCR court properly find trial counsel was not ineffective for failing to object when the trial court charged mutual combat and self-defense?
- II. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court did not give a defense of others charge even though trial counsel argued for a defense of others charge during the charge conference?
- III. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court charged accomplice liability and aiding and abetting even though trial counsel argued against the charge during the charge conference?

STATEMENT OF THE CASE

Jerome Campbell was tried before a jury January 23–27, 2012, for one count of murder, and three counts of assault with intent to kill (AWIK). The charges stem from a gun-fight that occurred in January 2009.

The gun-fight arose from the culmination of two underlying disputes involving Campbell's relatives. The first dispute was an over the phone argument between Campbell's mother, Sandra Campbell (Mother), and Anthony German. Mother was the maternal great-grandmother of Anthony German's new-born child. Anthony German allegedly did not want Mother to visit his child. The second dispute was an argument between Campbell's sister (Charise Coaxum) and Mother, and Coaxum's husband (Michael Allen) and brother-in-law (Frank Haigler)¹ at Coaxum and Allen's apartment. Coaxum wanted to kick Allen out of their apartment. Mother was present during the argument in support of Coaxum, and Haigler was present in support of Allen. The argument ended peacefully, and Coaxum told Allen he could come back later to the apartment; however, she would have to let him in the apartment because she kept the only key. All parties involved in the second dispute left the apartment.

Throughout the day leading up to the gun-fight, Allen and the German brothers made threats towards Campbell, and Campbell made threats towards Allen and Anthony German. Both sides were aware that threats were made. Allen, and the German brothers were aware Campbell was armed. Anthony German armed himself because of the threats Campbell had made.

The gun-fight occurred when Allen tried to return home. On his way back home, Allen was accompanied by Haigler and the German brothers. The group went inside the BP station across the street from Allen's apartment complex. Allen and Haigler each purchased a beer. The

¹ While Haigler stated at trial that he and Allen were not related by blood, all parties refer to Haigler as Allen's brother.

group gathered in the BP's parking lot while Allen and Haigler drank their beer. Haigler decided to scout out whether it was safe for Allen to return home. Haigler encountered Campbell in the parking lot outside Allen's apartment. The two exchanged words, then Campbell allegedly turned and stated "Go get that. Go get that." (App. 313). Thereafter, two men wielding shotguns exited the apartment, Campbell punched Haigler in the face, and Haigler fled. Haigler testified he was shot at twice as he fled. (App. 313–316). Haigler almost made it back to the gas station when he heard, and then saw, Campbell's car approaching. Haigler jumped into the bushes across the street from the BP to hide. (App. 317). The evidence presented at trial suggests that gunshots came from Campbell's car, and from the BP parking lot. (App. 234–35, 385–87, 465). Michael German was struck in the head by a ricocheted bullet. Michael German died. (App. 190–94).

Campbell was charged with the murder of Michael German. Campbell was also charged with AWIK towards Frank Haigler, Michael Allen, and Anthony German. The State's case was based upon the theory of accomplice liability—the hand of one is the hand of all. (App. 730–42). The jury convicted Campbell as indicted, and the trial court sentenced him to serve concurrent terms of imprisonment of thirty years for murder, and ten years for each AWIK charge. (App. 782–83, 797–98).

Campbell appealed his convictions, and the court of appeals affirmed in an unpublished opinion. *State v. Campbell*, Op. No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Campbell commenced this PCR action on May 12, 2014.

ARGUMENT

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law, and review conclusions of law de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

I. **Did the PCR court properly find trial counsel was not ineffective for failing to object when the trial court charged mutual combat and self-defense?**

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Campbell argues trial counsel was deficient because the mutual combat charge under-cut his requested self-defense charge in violation of South Carolina law citing *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). However, trial counsel was not deficient because *Taylor* is distinguishable from the instant case. In the instant case, the mutual combat charge was supported by the record. Campbell argues he was prejudiced by trial counsel's alleged deficiency because the mutual combat charge only served to confuse the jury as to the meaning of self-defense, and shifted the burden of proof. Campbell was not prejudiced because the trial court's charge on self-defense and mutual combat was not confusing, and did not shift the burden of proof away from the State.

“[T]he trial [court] is required to charge only the current and correct law . . . and the law to be charged to the jury is determined by the evidence at trial.” *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (internal citations omitted). “[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Jury instructions should be considered as a whole. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994).

During the charge conference, trial counsel argued for the trial court to give a self-defense charge. (App. 655–667). The trial court agreed the facts supported a self-defense charge. (App. 669). The trial court charged the jury on self-defense. (App. 758–62). The trial court began its self-defense charge by stating:

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. . . . On the other hand if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

(App. 758). The trial court then charged the jury on the first element of self-defense:

[T]he defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. . . .

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 759).

The PCR court found trial counsel was not ineffective for failing to object to the above referenced charge on self-defense. Specifically, the PCR court found Campbell was not deficient because the mutual combat charge was supported by the record. (App. 1098). The PCR court concluded that Campbell was not prejudiced because an objection to the mutual combat charge would have been unsuccessful because the charge was supported by the record. (App. 1098).

Campbell argues trial counsel was deficient for failing to object to the trial court's self-defense and mutual combat charge. The crux of Campbell's deficiency argument relies on *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). Campbell's reliance on *Taylor* is misplaced, as *Taylor* is distinguishable from the instant case. Because the record supports the mutual combat charge, trial counsel was not deficient for not objecting to the charge.

In *Taylor*, Thel Taylor was arrested for the murder of Kevin Carter. 356 S.C. at 229–31, 589 S.E.2d at 2–3. Taylor and Robert Murphy got off work and went to Angela Wallace's house to meet Wallace, Myranda Stillinger, and Carter for drinks. *Id.* at 229, 589 S.E.2d at 2. At some point in the evening, Carter and Stillinger began arguing; Taylor intervened in an attempt to stop the argument. *Id.* Thereafter, Taylor and Carter began to fight. The fight began inside, but eventually moved outside. *Id.* at 229–30, 589 S.E.2d at 2. Eventually, Taylor drew a knife from his pocket and began stabbing Carter. Taylor stabbed Carter fifteen times. An autopsy report revealed that Carter died from a stab wound to the heart. *Id.* at 230, 589 S.E.2d at 2. At trial, Taylor admitted that he stabbed Carter, but claimed he acted in self-defense. *Id.* The trial court charged self-defense; however, the trial court also charged mutual combat. *Id.* at 230–31, 589

S.E.2d at 2–3. The jury convicted Taylor of murder and possession of a weapon during the conviction of a violent crime. *Id.* at 231, 589 S.E.2d at 3. On appeal, this Court reversed Taylor’s convictions.

The Court stated, “Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the ‘no fault’ element of self-defense cannot be established.” 356 S.C. at 232, 589 S.E.2d at 3. The Court concluded the mutual combat charge was unwarranted because there was no evidence Carter knew Taylor was armed, and there was no pre-existing ill will between the parties. *Id.* at 234, 589 S.E.2d at 5.

Campbell suggests *Taylor* stands for the proposition that mutual combat and self-defense should not be charged together. However, *Taylor* does not stand for such. Since *Taylor*, the court of appeals has recognized that self-defense and mutual combat are not mutually exclusive. *See State v. Jackson*, 384 S.C. 29, 38 n. 5, 681 S.E.2d 17, 21 n. 5 (2009) (“We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with Taylor.”). Because mutual combat and self-defense are not mutually exclusive, trial counsel was not deficient for failing to object. Further, the mutual combat charge is supported by the record.

The mutual combat charge was supported by the evidence at trial. Specifically, Frank Haigler, Michael Allen, Anthony German, Charise Coaxum, and Mother’s testimonies. Haigler, Allen, and Anthony German’s testimonies show that their group knew Campbell was armed, and there was pre-existing ill will between the parties. Haigler stated he saw Campbell’s car drive up to the Germans’ apartment and he approached the car. He stated that as he approached the car he heard Campbell’s voice, and then the rear window rolled down and he saw a gun pointed at him.

(App. 304–05). He then informed everyone to back away from the car because “[Campbell’s] got a gun.” (App. 305).

Allen testified that Campbell had threatened him earlier the day of the incident. He stated Campbell drove past the Germans’ apartment and threatened Anthony German, “I know where you live at now. I know where you live at now.” (App. 417–18). Allen stated that Campbell also threatened him, yelling, “You better not come home. I’ll be there soon.” (App. 418).

Anthony German corroborated Haigler and Allen’s testimony. German stated that he heard Campbell threaten him directly. (App. 458). German stated that he recognized Campbell, and that he saw Campbell with a gun. (App. 458–59). German also stated that before the group left his apartment complex, he armed himself with a gun for protection from Campbell. (App. 460–61).

The record also contains evidence that Campbell knew Michael Allen, and the German brothers made threats against him. Coaxum’s testimony shows that Campbell was aware Michael Allen and Anthony German had made threats on his life. Coaxum testified that Allen, her husband, sent her a text message stating, “And your brother called me a punk. Tonight we’ll see. Real niggers do real things.” (App. 495–96). Coaxum testified Allen, Haigler, and the German brothers came over to her apartment looking for Campbell because “[Campbell] told them that he was going to be [at the apartment] and [Campbell] sent them a threat.” (App. 496). Coaxum further stated that Michael Allen told her, “We are Bloods and Bloods stick together. Your brother gonna die tonight.” (App. 498). Coaxum stated that Anthony German told Mother, “Your son gonna die tonight.” (App. 498). On cross-examination Coaxum stated that after the group left her apartment, “I called [Campbell] and told him that they were looking for him and they said that he was going to die tonight.” (App. 513).

Because the instant case is distinguishable from *Taylor*, and because the mutual combat charge is supported by the record, the PCR court properly found trial counsel was not deficient for failing to object to the trial court charging mutual combat and self-defense.

Campbell was not prejudiced because the trial court's charge did not shift the burden of disproving self-defense away from the State. The trial court properly submitted to the jury the question of whether Campbell was at fault in bringing on the difficulty. As stated above, the trial court charged the jury on the elements of self-defense. In charging the first element of self-defense, the trial court charged the law on mutual combat. The trial court charged that if the jury found Campbell engaged in mutual combat, then the State had met its burden of disproving the first element of self-defense. The trial court's instructions did not shift the burden of proof away from the State; therefore, Campbell was not prejudiced by the trial court charging mutual combat and self-defense.

The PCR court correctly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Certiorari should be denied as to this issue.

II. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court did not give a defense of others charge even though trial counsel argued for a defense of others charge during the charge conference?

Trial counsel was not ineffective for not objecting after the trial court did not give a defense of others jury charge. Trial counsel was not deficient because he requested the defense of others jury charge, and argued vigorously in support of the charge. Campbell was not prejudiced because, even if counsel had objected, it is unlikely the trial court would have changed its ruling and given a defense of others charge.

Trial courts are required to charge the current and correct law, and the law to be charged is determined by the evidence at trial. *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Trial counsel's

performance is measured under reasonable professional norms. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Trial counsel argued for a defense of others charge during the charge conference. (App. 660–69). The trial court ruled:

I do not think that it would be appropriate for me to instruct defense of others because there is no testimony that he shot a weapon to defend someone else and that's what defense of others is about. It's about you having the ability or the legal right to basically stand in the shoes of someone else and to exercise their right to defend themselves. - - And so I don't think that - - And actually, to some extent it's it's cumulative because it's basically the same instruction.

(App. 669). The trial court did not give a defense of others charge. Trial counsel did not object after the trial court charged the jury and take exception to the defense of others charge not being given.

At the PCR hearing, trial counsel stated he did not object after the trial court charged the jury because of the way the trial court ruled during the charge conference. (App. 1078).

The PCR Court found trial counsel trial was not deficient because he acted in accordance with reasonable professional standards by requesting “the defense of others instruction and arguing vigorously in support of the charge.” (App. 1099). The PCR court found Campbell was not prejudiced because there is no reasonable likelihood “[Campbell] would have been acquitted, had [trial] counsel objected.” (App. 1099).

Trial counsel acted within reasonable professional norms when he argued for a defense of others charge, the trial court ruled against him, and he did not re-hash the same arguments after the jury was charged. The PCR court did not err in finding trial counsel was not deficient for failing to object after the trial court made its ruling not to charge defense of others, and charged the jury pursuant to that ruling. Whether the trial court should have given a defense of others

charge was an issue preserved for appellate review; therefore, trial counsel was not deficient for failing to object to the trial court not charging defense of others.

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court not giving a defense of others jury charge when the trial court had already ruled on the issue. Certiorari should be denied as to this issue.

III. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court charged accomplice liability and aiding and abetting even though trial counsel argued against the charge during the charge conference?

Trial counsel was not ineffective for failing to object to the trial court giving an aiding and abetting and accomplice liability jury charge. Trial counsel was not deficient because the charge was supported by the evidence at trial. Campbell was not prejudiced because even if trial counsel had objected, the objection would not have been successful.

The PCR court found trial counsel was not deficient because the jury instructions on aiding and abetting and accomplice liability were properly given. The PCR court found Campbell was not prejudiced because any objection made by counsel would have been denied. (App. 1097).

Trial courts are required to charge the current and correct law, and the law to be charged is determined by the evidence at trial. *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3.

Campbell asserts no substantial circumstantial evidence in the record establishes a malicious intent to aid and abet a shooting in this case. Specifically, Campbell asserts there was no testimony he ordered or encouraged anyone else to fire a gun. The State submits this argument is without merit.

Frank Haigler testified he walked from the gas station to the apartment, alone, to check and see if it was okay for his brother to go home. (App. 311). He stated that when he got close to the apartment, Campbell was waiting in the parking lot. (App. 312). Haigler stated that he called out to Campbell, and Campbell responded, "What you doing over here?" (App. 312). Haigler stated

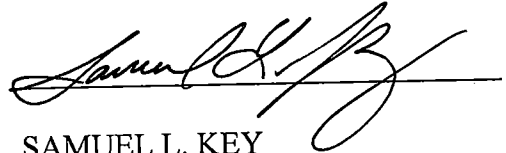
he tried to explain to Campbell that the situation between Coaxum (Campbell's sister) and Allen (Haigler's brother) had been worked out. Haigler stated that Campbell appeared to be "heightened." (App. 313). Haigler stated that Campbell the turned and said, "Go get that, go get that;" thereafter, two men wielding shotguns exited the apartment, and Campbell punched Haigler in the face. (App. 313). Haigler stated that after Campbell punched him, he spun around and fled, and two shots were fired at him. (App. 313-17).

Haigler's testimony supports the accomplice liability jury charge being given. It can reasonably be inferred that Campbell's statement, "Go get that, go get that," was an order to shoot; the trial court made this inference in its ruling on a directed verdict. (App. 484). The trial court properly gave an accomplice liability jury charge. Trial counsel was not deficient in failing to object to the trial court charging accomplice liability.

Trail counsel was not ineffective for failing to object to the trial court giving an accomplice liability jury charge. Campbell was not prejudiced because the accomplice liability charge was supported by record. Therefore, trial counsel was not ineffective for failing to object to the trial court charging accomplice liability. Certiorari should be denied as to this issue.

CONCLUSION

Based on the foregoing argument, trial counsel was not ineffective. Trial counsel did not render deficient performance, nor did Campbell suffer from any of the alleged deficiencies. Therefore the State requests certiorari be denied.

A handwritten signature in cursive script, appearing to read "Samuel L. Key", written over a horizontal line.

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
Honorable William H. Seals Jr., Circuit Court Judge

Appellate Case No. 2018-000464

JEROME CAMPBELL,

PETITIONER

v.

STATE OF SOUTH CAROLINA,


RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by mailing two copies in the United States mail, postage prepaid, addressed to:

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

This 17th day of December, 2018.



Jennifer Jennison
Legal Assistant for Respondent



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DEC 17 2018

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

December 17, 2018

The Honorable Daniel E. Shearouse
Clerk of Court — SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Jerome Campbell v. State of South Carolina
Appellate Case No.: 2018-000464

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the **Return to Petition for Writ of Certiorari** in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

Samuel L. Key
Assistant Attorney General
S.C. Bar # 103206

SLK/jaj
Enclosures

cc: C. Rauch Wise, Esquire
Victim Advocacy Division