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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

SEP 05 2019

S.C. SUPREME COURT

Certiorari to Greenville
County

Honorable Alex Kinlaw, Circuit Court Judge

JOHN M. CURETON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002020

Pro Se Response to Petition Filed By
Counsel Mrs. K. Hudgins, respectfully

INDEX

INDEX... i

ISSUES/QUESTIONS PRESENTED... 1

STATEMENT... 2

ARGUMENT... 3-11

FACTS... omitted

CITATION OF STATUTES / S. C. CODE
OR OTHER SUPPORTING LEGISLATION... 12

CONCLUSION... 13

ISSUES/QUESTIONS PRESENTED

- I. Petitioner was indicted for murder, but he did not meet the elements for murder. For an indictment to be valid one has to meet every element of the indictment. There was no malice or aforethought shown by Petitioner. Was counsel ineffective for failing to quash the indictment? Why did counsel fail to see that Petitioner only should have been convicted of involuntary manslaughter?
- II. Did the PCR judge err in refusing to find counsel ineffective for not letting Petitioner's brother Justin Cureton testify as a witness on his behalf? Petitioner's brother testified for the first time at PCR hearing (App. p. 252 - p. 260). This was helpful to Petitioner's defense. Was counsel ineffective for failing to allow Petitioner's brother to testify as a witness on his behalf? Counsel violated Petitioner's Sixth Amendment by denying Petitioner to have compulsory process for obtaining witnesses in his favor.
- III. Did PCR judge err in refusing to find counsel ineffective for failing to properly argue that Petitioner was entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code § 16-11-410, 16-11-420, 16-11-430, 16-11-440, 16-11-450. History: 2006 Act No. 379, § 1, eff June 9, 2006.
- IV. Did PCR judge err in refusing to find counsel ineffective for failing to conduct a Preliminary Hearing for Petitioner? Counsel violated Petitioner's Fifth, Sixth, and Fourteenth Amendments by denying Petitioner due process.

Statement

On August of 2016, Greenville County Grand Jury indicted Petitioner for murder, poss. of a weapon and attempted murder, indictments # 2014-GS-23-2373, 2374. On December 12, 2016, Petitioner proceeded to jury trial before the Honorable Edward W. Miller. Thomas J. Quinn represented Petitioner at trial. Elizabeth C. Major prosecuted the case. After the judge denied Petitioner's motion for immunity pursuant to the Protection of Persons and Property Act, S.C. Code §16-11-440, the jury was selected and the State presented four witnesses, Petitioner entered guilty pleas to voluntary manslaughter and assault and battery first degree. And Judge Miller sentenced petitioner to fifteen (15) years. A timely notice of intent to appeal was filed but the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by SCACR Rule 203(d)(1)(B)(iv).

On November 8, 2017, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on May 9, 2018. On October 22, 2018, an evidentiary hearing was held before the Honorable Alex Kinlaw, Jr. R. Mills Ariail, Jr. represented Petitioner at the PCR hearing. DeShawn H. Mitchell represented the State. In a written order signed November 5, 2018, Judge Kinlaw denied relief and dismissed the application. A timely notice of intent to appeal was served on November 12, 2018. This petition for writ of certiorari follows.

ARGUMENT

- The PCR judge erred in refusing to find counsel ineffective for failing to properly argue that Petitioner was entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code § 16-11-410, 420, 430, 440, 450. History: 2006 Act No. 379 § 1 eff June 9, 2006.
- (App. p. 84, line 22 - p. 85, lines 1-20) Trial counsel failed to cite any case law or even the statute to support the motion.
- Petitioner testified that the deceased and others came on the porch of the house he shared with his brother to do physical harm to the Petitioner's brother. Petitioner and his brother asked the crowd to leave and the crowd refused putting the Petitioner and his brother and their dwelling in danger. (App. p. 40, lines 1-25).
- After Petitioner and his brother ordered the deceased and the crowd to leave their dwelling curtilage and they refused to leave; by state law it is considered to be a criminal trespass; therefore giving the Petitioner and his brother the right to eject the trespassers, by necessary force even to the taking of life to complete the ejection. which codified and extended common-law "castle doctrine", which provides that there is no "duty to retreat" when attacked on one's own premises is a clear indication from legislation.
- Investigator Michael Fortner testified that the incident took place on the Petitioner and his brother's property; therefore initiating Castle Law. (App. p. 82, lines 7-16).

- Investigator Michael Fortner testified that the crowd approached the base of the porch of the Petitioner and his brother's dwelling. (App. p. 82, lines 11-13). Pursuant to S.C. Code § 16-11-430. (1) "Dwelling" means a building or conveyance of any kind, including an attached porch.
- The deceased was intent on causing harm to Petitioner's brother and were clearly trespassers with the intention of causing violence. (App. p. 85, lines 1-20). Petitioner had the right to protect his brother and his dwelling.
HOMICIDE → 757. Defense of another person.
S.C. 1928. Third party may use violence in quieting attack on another if he believes there is danger of others receiving serious bodily harm.
 State v. Petit, 142 S.E. 725, 144 S.C. 452.
S.C. 1944. Under law of self-defense, a person may not only take life in his own defense, but he may do in defense of another who bears to him relationship of wife, parent or child.
 State v. Hewitt, 31 S.E. 2d 257, 205 S.C. 207.
S.C. 1949. The Killing of a person is excusable under the law of self-defense, the defense of one's family or his castle, etc. when all necessary elements of self-defense and of his family are established.
 State v. Martin, 57 S.E. 2d 55, 216 S.C. 129.
- Petitioner's brother testified that Petitioner shot deceased and his accomplice to protect his brother when trespassers attempted to lynch Petitioner's brother, (App. p. 252 - p. 260). (App. p. 259, line 1).
- Petitioner was presumed to have a reasonable fear of imminent peril or death or great bodily injury to himself or his brother and brother's family because the people against whom deadly force was used were in the process of unlawfully and forcefully entering

the porch and trailer and were in the process of attacking the Petitioner's brother.

- Under South Carolina law, a closed fist can be considered a deadly weapon. Especially when a lynching is attempted. Petitioner was only protecting his brother and their castle.

- Petitioner testified he saw the deceased look as if he was starting to pull out a gun when he shot. (App. p. 45, lines 18-24).

HOMICIDE § 1795. Reasonableness of belief or apprehension.

S.C. 2011. For purposes of determining whether defendant acted in self-defense, defendant has the right to act on appearances, even if his belief is ultimately mistaken.

State v. Dickey, 716 S.E.2d 97, 394 S.C. 491 rehearing denied.

A person has the right to act on appearances, even if the person's belief is ultimately mistaken.

State v. Fuller, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired his weapon in order to act.

There is uncontroverted testimony that Petitioner acted on appearance.

- Officer Davis also testified there was a pistol version BB gun found next door where the deceased ran to after the Petitioner shot. (App. p. 106, lines 17-21), and also (App. p. 114, lines 7-19). Therefore Petitioner like he saw the deceased start to pull a gun.
- Petitioner was inside his dwelling tending to his family before his dwelling was encroached on by the deceased and others who trespassed and attempted to harm Petitioner's brother, therefore Petitioner could not have any aforethought of entertaining any thought of murder.

- Petitioner was at his dwelling that he shared with his family and was acting lawfully when the trespass and intrusion occurred on the property and premises he shared with his brother's family. Pursuant to S.C. Code § 16-11-440 (c) "A person who is not engaged in an unlawful activity and who is attacked in another place where he has the right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person, or to prevent the commission of a violent crime."

Therefore Petitioner was justified in using deadly force.

- Sufficient evidence exists that Petitioner reasonably believed shooting victim was necessary to prevent great bodily injury towards his brother and that he acted in self-defense of himself and in the defense of others as required for immunity under the Protection of Persons and Property Act. History: 2006 Act No. 379, § 1, eff June 9, 2006.

- HOMICIDE § 17. Lawful Conduct.

S.C. 1999. A person who shoots another can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.

State v. Burriss, 513 S.E. 2d 104, 334 S.C. 256.

- Petitioner met the elements of self-defense, but counsel failed to argue that Petitioner met the elements of self-defense, and as a result, the trial judge did not make specific rulings as to the elements of self-defense. Counsel's performance was deficient.

As to the specific elements of self-defense, Petitioner was without fault in bringing on the difficulty. Petitioner actually believed that he and his family were in danger. The reasonableness of the Petitioner's fear should be presumed pursuant to S.C. Code § 16-11-440 (A). Because Petitioner was in the curtilage of his home when he used deadly force, he had no duty to retreat, and was free to stand his ground and meet force with force. See State v. Scott, 424 S.C. 463, 474-75, 819 S.E.2d 116, 121 (2018). (Because Scott was in the curtilage of his home when he used deadly force against Niles, he already had no duty to retreat, and was free to stand his ground and meet force with force, pursuant to the Castle Doctrine as explained in Grantham, 224 S.C. 41 at 45, 77 S.E.2d 291, 293.)

- Petitioner was prejudiced by counsel's failure to argue properly that ~~the~~ Petitioner was entitled to immunity. There is reasonable probability that if counsel had properly argued the self-defense claim and the Protection of Persons and Property Act provided in S.C. Code § 16-11-410, 420, 430, 440 (A), (C), and (D); 450, the judge would have granted Petitioner immunity from prosecution.

- Officer Davis testified that none of the witnesses were telling the truth about what happened (App. p. 112, lines 19-25). The reason they did not tell the truth was because they trespassed on the Petitioner and the Petitioner's brother's premises to inflict harm on the Petitioner's brother.
- Officer Davis also testified he found marijuana, and pills next door with the victims, and also look at the toxicology report; the deceased was highly intoxicated. (App. p. 114, lines 20-23).
- Petitioner's brother just asked was everyone alright and the deceased started to approach the Petitioner's brother's porch with others to attempt to harm Petitioner's brother. (App. p. 125, line 21) and (App. p. 127, lines 17-21).
 Note: For a person to want to assault a home owner simply because they asked was everyone alright shows what state of mind the deceased was in and shows he was intent on causing violence and was looking for trouble. And there is no telling what terrible act he was capable of doing since he was so intent on harming Petitioner's brother who had the right to stand his ground since there was no duty to retreat because the Petitioner and his brother were at their

residence. Also look at (App. p. 139, lines 5-25). Also (App. p. 133, lines 8-25). The deceased keeps trying to approach the porch to assault Petitioner's brother and cannot be stopped. May I add that it is 11 o'clock in the middle of the night with very little light leaving the Petitioner and his family vulnerable because of the trespassers were on their premises and there was little to no visibility therefore Petitioner and his brother were at a disadvantage, not just because they are outnumbered by the crowd; but because of the cloak of darkness they had no room for mistake, because a mistake could have cost one of their lives esp. when the crowd had threatened to use guns. (App. p. 113, lines 17-20). (App. p. 114, lines 1-5). It is evident that Petitioner and his brother and their castle were at an disadvantage and feared for their safety.

- Petitioner had the right to eject trespassers from the premises. Petitioner's decision to exit the door and go stand on the porch to ensure their departure cannot be construed as acting in bad faith. The victims were accompanied by other subjects when they approached the Petitioner's and his family's back porch to do physical harm to the Petitioner's brother. With Petitioner and his brother being

related, both could exercise the right to defend the other if he believed he was in imminent danger. [words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense, State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) quoting State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951)]. Such circumstances are present in this case. Petitioner testified he saw the deceased reach under his shirt when he advanced on Petitioner's brother with other subjects when he shot in defense of his brother and himself. Greenville County Sheriff Officers retrieved a pistol version of a BB Gun at the residence the deceased fled into. [A person has the right to act on appearances, even if the person's belief is ultimately mistaken. State v. Fuller, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired his weapon in order to act. State v. Starns, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000), Citing State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978)]. Also look at (App. p. 256, lines 1-14). Also take a look at (App. p. 259, lines 19-25) and (App. p. 260, lines 1-3).

- Petitioner is entitled to relief.

I would add that the Petitioner has met the elements of self-defense beyond a reasonable doubt. There is no evidence that Petitioner at any time was angry or lost control. Instead, the evidence reflects that Petitioner retained his composure despite the threats being made at his brother and the Petitioner. Petitioner only shot when the deceased along with other perpetrators advanced on Petitioner's brother, Petitioner's brother was surrounded instantaneously, thus triggering the Petitioner to act in a fast manner because the danger was now imminent and his brother is surrounded. I'm sure the Legislature has no intent for a person to sit by idly while his family member is in the line of direct danger. Under the circumstances of the Petitioner and his brother and their family being at their dwelling and their residence when they were met by a group of trespassers aiming threats at the inhabitants of the Petitioner and his brother's home, both the Petitioner and his brother reserved the right to Castle Guard their home and defend one another as it is the General Assembly's intent. Petitioner never had any motive to do violence, or ill will. The only evidence is that Petitioner's only thought was keeping the safety of his family; may I add the Petitioner and his brother had two young children inside of the dwelling || at the time of incident.

CITATION OF STATUTES/
S.C. CODE OR OTHER
SUPPORTING LEGISLATION

- S.C. Code § 16-11-410, 420, 430, 440, 450.
Protection of Persons and Property Act.
History: 2006 Act No. 379, § 1, eff June 9, 2006.
- WEST'S SOUTH CAROLINA
DIGEST 2d
1783 TO DATE

↓
☞ 747. Defense of dwelling or habitation.
See also ☞ 759.

V.I. EXCUSABLE OR JUSTIFIABLE
HOMICIDE.

- ☞ 751. Constitutional and statutory provisions.
- ☞ 753. Prevention of the commission of crime.
- ☞ 757. Defense of another Person.
- ☞ 758. Defense of Property.
- ☞ 759. Defense of Dwelling or Habitation.
- ☞ 760. In General.
- ☞ 761. Duty to Retreat or avoid danger.
- ☞ 769. No Duty to Retreat.
- ☞ 766. In General.
- ☞ 774. In General.
- ☞ 781. Lawful Conduct.
- ☞ 787. Real or apparent danger.
- ☞ 788. Circumstances and events constituting danger.
- ☞ 795. Reasonableness of belief or apprehension.
- ☞ 659. What constitutes involuntary manslaughter,
- ☞ 687. In General. in general.

CONCLUSION

Based on the following argument, this court should grant the petition for writ of certiorari.

This 3rd day of
September, 2019.

John Cureton

John Mark Cureton
Petitioner

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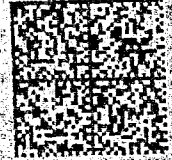
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