

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000553

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NOV 12 2019

S.C. SUPREME COURT

GEORGE W. HUGHES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO RESPONDENT'S RETURN

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

Petitioner in the above captioned Post-Conviction Relief Appeal comes before this Honorable Court, acting by and through his undersigned counsel, in Reply to Respondent's Return to Petitioner's Revised Petition for Writ of Certiorari. Petitioner stands on his Petition for Writ of Certiorari with regard to the issues addressed by Respondent in its Return with the exception of the few inaccuracies Petitioner feels must be brought to the attention of the Court. They will be briefly addressed under the headers for the sections of the Return in which they appear.

STATEMENT OF FACTS

In its Statement of the Facts, Respondent asserts that Lt. Ketcherside testified he took a picture of the knife [found in Petitioner's car], "*because he wanted to determine if it was the same brand as the knife (victim knife) in the victim's hand. Tr. 221.*" This statement is not an accurate description of this Officer's testimony. What he actually said at trial was far more misleading and susceptible to misinterpretation by the jury. His actual testimony was, as correctly quoted by Petitioner in his Petition for Writ of Certiorari, "*I wanted to verify that it was the same brand and type of knife that was found on the scene.*" App.p. 221, ll. 17 – 20.

QUESTION 2

Respondent asserts that Petitioner was not prejudiced by Ketcherside's comments about wanting to "*verify that it was the same brand and type of knife that was found on the scene.*" Where Trial Counsel was able to get Ketcherside to state that the knife in Petitioner's car had "*no bearing on the case.*" Read carefully however, Ketcherside's testimony emphasized that they knew the gun in the car had not been inside the trailer

and was not the knife found in the deceased hand. This testimony left hanging the obvious testimony that for some reason, left for the jury to speculate about, it was nevertheless important to this lead investigator to “*verify that it was the same brand and type of knife that was found on the scene.*” His testimony never conceded that there was no value to the presence of the knife in the car, but rather simply clarified that they knew it wasn’t the knife from the scene of the homicide. The very real danger remained that Petitioner’s jury was more likely to believe that Petitioner had planted the knife on the deceased if they interpreted these remarks by Ketcherside to mean that he had verified that the knife found in the victim’s hand was the “*same brand and type*” as the knife found in Petitioner’s car.

QUESTION 3

The most egregious misstatement of the testimony from Petitioner’s trial found in Respondent’s Return, addresses the testimony of Dr. Ross, the pathologist who conducted the autopsy in this case and testified for the State at trial. Respondent states in its Return that, “*Dr. Ross testified at the PCR hearing that she was ninety-nine percent sure the weapon would not remain in the victim’s hand that way and that the picture was consistent with cases she has had where the weapon was staged.*” Return, Question 3, p.11. What the PCR hearing transcript actually reflects is that Dr. Ross was asked by PCR Counsel, “[w]hen you said it was not typical, was it your intent to convey that it never happens?” Her response was, “[n]inety-nine percent sure, yes. We have lots of cases that are scenes that are staged where the guy or the weapon is put in the person’s hand. But usually an instrument like that would fall out of the hands during the process of dying.” App.p. 635,, 7 – 13. She is next asked about a scenario where an individual is

lying down on a surface with their hand palm down when they lose consciousness. She acknowledged that in that circumstance the individual's fingers would have no way to unfurl and that the instrument would have nowhere to fall. She acknowledged that on those facts, finding the instrumentality in the first was exactly what she would expect to see. App.p. 635, l. 14 – p. 636, l. 22. State's Exhibit 54, found at App.p. 809, reflects that victim was found in precisely that position at the scene. Dr. Ross never stated that she was 99 % certain this knife would not have stayed in the deceased hand and she did not say that the picture of the deceased holding the weapon was consistent with cases she had seen when weapons were staged.

Respondent argues that Ketcherside's testimony concerning the blood trail was advantageous to Petitioner because it was "*aligned with Petitioner's story that the victim continually backed up into the house after being shot.*" Return, p. 12, para. 1. Petitioner in fact testified that at one point after being initially shot, the deceased turned completely around and faced him again before heading back in the other direction. App.p. 377, ll. 2 – 19. Ketcherside testified that the directionality of the blood trail was such that, "*there's nothing coming back. All the blood appeared to be moving in the direction from outside to inside the residence.*" App.p. 186, l. 23 – p. 187, l. 11. State's Exhibit No. 20, found at App.p. 891, was not used by Trial Counsel to impeach investigator Ketcherside's testimony despite the fact that this photograph clearly shows a looping pattern in the blood trail consistent with Petitioner's position that at one point after being shot, the deceased turned around and briefly headed back facing him before turning back left away from Petitioner.

Question 5

Respondent argues, correctly, that the prosecution is allowed to argue that malice may be inferred from the use of a deadly weapon. That is not what the prosecution argued in Petitioner's case. Here, the prosecutor informed the Petitioner's jury that the use of a deadly weapon is evidence of malice and that shooting someone five times is evidence of malice. App.p. 478, ll. 22 – 23.

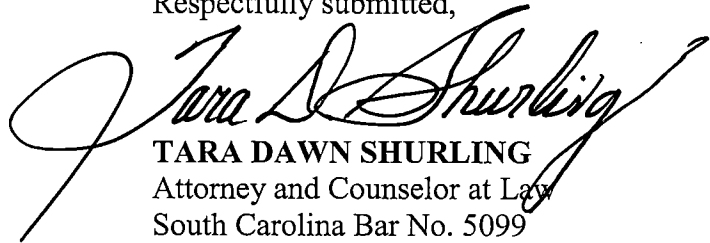
Questions 6 – 22

Respondent argues in both the Motion to Strike and their Return that Petitioner does not argument authority in support of his arguments. This is simply not accurate. In both the Petition for Writ of Certiorari and the Memorandum filed in the lower court, Petitioner argues the law relating to a PCR Applicant's burden of proof, The standard for finding deficient representation, the standard for establishing prejudice and the law applicable to claims of strategy. Interestingly, none of the law cited by Respondent on this point is from Post-Conviction Relief cases. Petitioner asserts that his Certiorari Petition addresses the appropriate law applying to a PCR appeal.

CONCLUSION

For all the reasons set forth in his Petition for Writ of Certiorari, as well as those incorporated from his Memorandum in Support filed in the circuit court, Petitioner now respectfully asks that the Writ be granted and relief granted without further briefing. Alternatively, Petitioner asks that the Writ be granted and that he be allowed to fully brief the issues developed in his PCR action.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 7th of November, 2019

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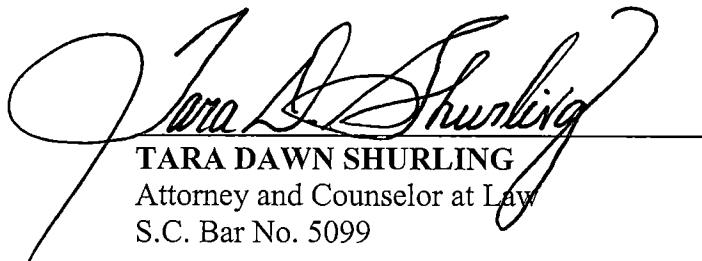
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to Respondent's Return in the above-entitled case has been served upon opposing counsel this the 7th day of November, 2019 by mailing one (1) copy in a stamped envelope properly addressed to:

Benjamin H. Limbaugh
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
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