

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Circuit Court Judge

CAMEREN L. KELLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001118

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUES PRESENTED

- I. Trial counsel erred in failing to develop an alibi defense to present on petitioner's behalf at trial.
- II. Trial counsel erred in failing to argue at trial for directed verdicts and for a complete instruction based on the exonerating principle of mere presence.

STATEMENT

Petitioner Cameren L. Kelley was convicted of voluntary manslaughter, first degree burglary, eight counts of kidnapping, two counts of assault and battery with intent to kill, five counts of assault with intent to kill, two counts of armed robbery, and six counts attempted armed robbery per jury trial held during the September 2011 term of the Sumter County General Sessions Court before Judge Howard P. King. Petitioner received an aggregate prison sentence of forty years. David F. Sullivan represented appellant at trial, and Assistant Solicitors John P. Meadors and Glenn B. Manning appeared on behalf of the state. App. 1-725. Petitioner appealed, but the South Carolina Court of Appeals dismissed the appeal on December 12, 2012. See State v. Kelley, No. 2012-UP-656 (S.C.Ct. App. December 12, 2012). Robert M. Pachak, Esquire, formerly of the South Carolina Office of Appellate Defense, represented petitioner on appeal.

On February 6, 2013, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 727-733. The respondent filed a return dated December 10, 2013, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 734-738.

A PCR hearing was convened on April 17, 2015, at the Sumter County Courthouse before Judge George C. James, Junior. App. 740-854. Petitioner was present at the hearing and represented by Ronald Lloyd, Esquire, and Assistant Attorney General Daniel F. Gourley appeared on behalf of the state.

On January 15, 2018, Judge James issued an Order of Dismissal in the case. App. 856-867. Petitioner appealed. This petition follows.

QUESTION I

Trial counsel erred in failing to develop an alibi defense to present on petitioner's behalf at trial.

At trial, seven witnesses¹ testified that two masked gunmen, who kept asking for money, had them all holed up in a trailer on Odell Road in Sumter County on December 14, 2009, and that during the melee that occurred as they were held there, gunshots were fired everywhere inside the trailer. Kemper Holliday, who was also inside the trailer, was killed by gunfire. Apparently, pandemonium followed when Lennie Belton, who owned the trailer, was able to get his gun and fire, and then shots were fired repeatedly thereafter. App. 186, l. 1-p. 188, l. 22

The two masked men were brothers Carlton Bracey and Calderone Bracey, and they both testified at trial on behalf of the state. Carlton Bracey testified that on the date in question, he and his brother Calderone were together when Vernon Goodwin and petitioner² arrived at his residence, and that they all talked about hitting a lick (robbery) and buying marijuana, and that they went (petitioner was the driver) to the trailer in question thereafter. Carlton Bracey stated that he shot Kemper at Mr. Goodwin's behest. Carlton Bracey stated that Hugh Phillips, Lance McCray, and brother Calderone Bracey were shot by gunfire also. App. 388, l. 10-p. 389, l. 24. Bracey stated that he fled on foot after the shooting. App. 388, l. 8-p. 394, l. 16. Calderone Bracey, who testified at trial, gave testimony that was identical to his brother's testimony. App. 462, l. 8-p. 490, l. 8.

¹ Hugh Phillips (App. 161, l. 21-p. 172, l. 25), Lennie Belton (App. 182, l. 8-p. 191, l. 15), Maurice Ransom (App. 282, l. 5-p. 290, l. 9), Tywan Ranson (App. 301, l. 1-p. 313, l. 7), Darren Graham (App. 323, l. 1-p. 336, l. 25), Lance McCray (App. 349, l. 7-p. 359, l. 18) and Ellen Phillips (App. 552, l. 14-p. 564, l. 22).

² Vernon Goodwin and petitioner were tried jointly as co-defendants.

During the PCR hearing, petitioner testified that counsel was ineffective in failing to present an alibi claim in his defense at trial. Apparently, petitioner was at his mother's niece's birthday party when the events in question occurred. Petitioner's mother, Pamela Kelley, testified at the PCR hearing and explained that petitioner was at the house during the party (from 8:30 pm until about 2/3 hours thereafter), and was there when they all learned via text that Kemper Holliday had been shot. Kelley added that she told trial counsel about the alibi. App. 78, l. 1-p. 795, l. 2.

Trial counsel testified at the PRC hearing and explained that he talked with Pamela Kelley about the alibi; and that although the robbery occurred at 9:00 pm, he failed to develop an alibi defense because petitioner told him that he (petitioner) drove the Bracey brothers to the crime scene, which was why he was charged as a principal. App. 770, l. 7 – p. 780, l. 23, App. 749, l. 11-p. 754.

Counsel erred in failing to develop an alibi defense in petitioner's case. In Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991), the Court held that trial counsel was ineffective at a burglary and rape trial in failing to present an alibi witness who would have testified that he saw the defendant leave a lounge fifteen minutes prior to the conclusion of the time of the rape. Compare also, Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989), where the Court held that counsel was ineffective in failing to call alibi witnesses for trial where the state's theory was that the defendant entered and robbed a convenience store at 3 a.m. because the defendant testified that he was home by 1 am on that morning, and also because his older brother would have testified that he saw the defendant sleeping in his room after 1 a.m., and his nephew would have testified that he was on the porch at 1 a.m. and saw the defendant arrive home at that time, and his younger brother would have testified that he helped the defendant inside the house after he

came home, as all of this collectively would have provided crucial proof in support of his alibi defense.

Here, counsel's failure to develop an alibi defense on petitioner's behalf at trial constituted deficient representation in violation of petitioner's Sixth Amendment right to competent legal representation at trial because but for this omission, a reasonable probability exists that the outcome of his trial would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

QUESTION II

Trial counsel erred in failing to argue at trial for directed verdicts and for a complete instruction based on the exonerating principles of mere presence.

Trial counsel testified that petitioner informed him that petitioner stated that he drove the robbers to the crime scene and that he did not believe a mere presence argument was needed. App. 758, l. 23 – p. 759, l. 7. The PCR judge ruled in effect that petitioner's pre-arrangement to aid and abet constituted guilt as a principal. App. 863. The State's theory was that petitioner was a principal and charged him as such. However, this was error because accomplice liability applied and mere presence and /or prior knowledge without more could not satisfy the burden of proof establishing guilt, and counsel admitted error in this regard. App. 743, l. 2 – p. 747, l. 14; App. 752, lines 2–25; App. 755, l. 5 – p. 759, l. 25; App. 768, l. 19 – p. 769, l. 19. There is no denying that accomplice liability was applicable in the case, regardless of the charge as a principal; and as a result, a mere presence was needed as the evidence supported it. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); State v. Lee, 298 S.C. 362, 380 S.E.2d (1989).

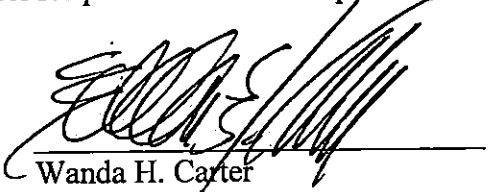
Mere presence is recognized as follows:

'Mere presence' is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, **mere presence** is generally an issue where the state attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found...State v. James, 386 S.C. 650, 689 S.E.2d 643 (2010), citing to State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996).

Since a person must be present at the scene or personally commit the crime as an accomplice (State v. Gibson, 390 S.C. 347, 701 S.E.2d. 766 (2012)), then petitioner could not have been convicted as an accomplice despite the argument that he was charged as a principal. **The trial judged charged mere presence, (App.676, l. 11 - p. 678, l. 22), but not completely as to how one must personally commit the crime or be present at the scene of the crime intentionally.** Counsel erred in failing to ask for a complete mere presence charge. (See also State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987), and therefore, his representation was deficient under the Sixth Amendment to the extent that but for the error, a reasonable probability exists that the outcome of the trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing arguments, counsel for petitioner would request that this Court allow full briefing on the above raised issues.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of December, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Circuit Court Judge

CAMEREN L. KELLEY,

PETITIONER

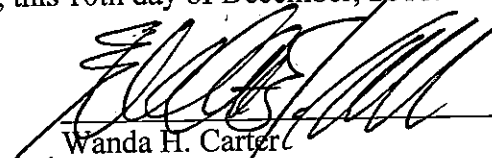
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STATE OF SOUTH CAROLINA,

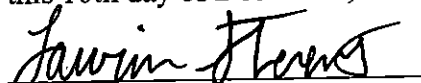
RESPONDENT

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 Megan Harrigan Jameson, 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 Cameren Laroderick Kelley, #347966, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 10th day of December, 2018.


Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 10th day of December, 2018.

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