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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable William H. Seals, Circuit Court Judge

JAMIE L. GILES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001364

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to argue evidence of Daniea Kelly's pending charges and his sentencing exposure on those charges was admissible pursuant to the Confrontation Clause of the Sixth Amendment and Rule 608(c), SCRE, as evidence of bias, where there is a reasonable probability the outcome of Petitioner's trial would have been different since Kelly's credibility was crucial to the state's case given the state alleged Petitioner shot Kelly with malice and Petitioner asserted he acted in self-defense?

STATEMENT OF THE CASE

On July 15, 2014, about five months before the shooting for which Petitioner was on trial, Petitioner was visiting the mobile home of Wilbert "Punchy" Burroughs, the neighborhood "bootlegger." He arrived around midnight to unwind and have a drink. App. 341, l. 12 – 342, l. 10. His then girlfriend, Brenda Brown, arrived a few minutes after him. App. 342, ll. 11-15. Petitioner and Brown had argued earlier in the day. App. 341, ll. 18-25. Shortly after Brown arrived, the pair continued their argument. The dispute started inside Punchy's trailer and eventually continued outside "up the street" from Punchy's residence. App. 342, ll. 16-18. As Petitioner and Brown were walking down the street arguing, Brown took off her shoe and struck Petitioner in the face. App. 343, ll. 12-17. "Out of reflex," Petitioner hit Brown and she fell to the ground. App. 344, ll. 8-12.

Brown's son and several of his friends separated Petitioner and Brown once their argument turned physical. App. 345, ll. 5-11. However, the argument resumed shortly thereafter. After the argument resumed, Daniea Kelly approached Petitioner from the right and struck him on the side of his face. Another person hit Petitioner in the back causing him to fall to the ground. Kelly and others, including Rodney Kinloch, began kicking Petitioner while he was on the ground. App. 345, ll. 13-24; App. 347, ll. 6-10. Petitioner was eventually able to get up and escape the beating. After distancing himself from his attackers, Petitioner saw Kelly "brandishing" a gun. App. 346, ll. 1-11. Kelly "cocked it" and said, "Yo, you going to make me come out of retirement." App. 347, ll. 18-24. Once Kelly threatened Petitioner with the gun, Petitioner fled the area on foot. App. 347, ll. 11-17.

Petitioner suffered bruised ribs and a broken finger as a result of the beating. App. 348, ll. 13-23. A couple of days later, he also discovered blood in his stool and sought medical

treatment from his primary care doctor. App. 348, l. 13 – 349, l. 1. After the bleeding worsened, Petitioner was admitted to the Georgetown Memorial Hospital. With subsequent treatment, the bleeding finally stopped. App. 349, l. 2 – 350, l. 15.

In August, about a month after the altercation, Petitioner was at Punchy's trailer. Punchy's neighbor, Phil, approached Petitioner and asked if he was willing to speak with Daniea Kelly, who had participated in the beating and threatened Petitioner with a gun. Petitioner agreed. Kelly ultimately apologized for his involvement in the prior event. App. 351, l. 6 – 352, l. 7.

On the night of December 3, 2014, Petitioner went to Punchy's trailer around half past eight. App. 359, ll. 13-15. His friend, Barney Wilson, arrived shortly thereafter followed by Brenda Brown and some of her family members. App. 360, ll. 17-19; App. 361, l. 24 – 362, l. 1. Wilson bought everyone a drink. As the group was socializing, Rodney Kinloch entered the trailer. Kinloch, who was part of the mob that attacked Petitioner in July, stood behind Petitioner and ordered a drink. Kinloch was "weird acting" "like something was wrong with him." App. 362, ll. 12-16. Before getting his drink, Kinloch left and went back outside the trailer. A few minutes later, Kinloch came back inside and ordered some cigarettes. App. 363, ll. 1-4. Kinloch then left the trailer again. App. 363, ll. 3-5. Petitioner found Kinloch's behavior "weird" and "suspicious." Petitioner "peeped" out the window and saw Daniea Kelly's pickup truck parked outside in Punchy's neighbor's yard. App. 363, ll. 5-14.

Kinloch then entered the trailer a third time. This time he stood directly behind Petitioner "about a foot away from the back of [his] head." App. 365, ll. 3-7. Petitioner turned his body to the side in order to "watch [his] back." App. 365, ll. 7-9. "After a few seconds," Kinloch left the

trailer and walked to the driver's door of Kelly's truck. Petitioner watched Kelly and Kinloch exchange words. Kelly then handed Kinloch a gun. App. 365, ll. 9-18.

Barney Wilson was in the bathroom at the time. Petitioner walked to the bathroom and asked Wilson if he "still got that gun." Wilson told him to "hold up" because he was on the phone. Petitioner returned to the front of the trailer and continued to "peep" out the window. App. 366, ll. 4-13. Kinloch then entered the trailer a fourth time and stood behind Petitioner again. App. 366, ll. 14-15. After Kinloch walked outside, Wilson gave Petitioner a gun, which Petitioner hid in his jacket. App. 366, ll. 15-17. Petitioner "felt like something was happening" because of Kinloch's "strange" behavior and the fact that he had seen Kelly give Kinloch a gun. App. 366, ll. 18-24.

Petitioner noticed Kelly's truck was now parked parallel to Punchy's trailer with the driver's side door directly lined up with the front door of the trailer. App. 367, ll. 2-18. Petitioner believed the truck was parked in a "perfect place to ambush or fire a shot" at someone leaving the trailer. App. 367, ll. 9-14. Petitioner was now so uncomfortable he decided to leave. App. 367, ll. 19-25.

Petitioner walked out the front door of Punchy's trailer. Almost immediately, he saw Kelly reaching down in his truck. Petitioner thought Kelly was reaching for a gun. As Kelly began to come back up, Petitioner removed the gun from his jacket and fired three shots. App. 370, l. 1 – 371, l. 2. He approached the truck and saw Kelly leaning "over the steering wheel still reaching down like he was trying to grab something." App. 372, ll. 22. Petitioner pulled the trigger again, but the gun was either out of bullets or jammed. App. 372, ll. 2-23. Before walking away, Petitioner noticed Tuvera McCrae, who was sitting in the passenger seat at the

time of the shooting, standing near the back of the truck. Petitioner did not know McCrae was in the truck when he fired. App. 372, ll. 8-16.

Kelly suffered three gunshot wounds: one to the left thigh, one to the left hip, and one to the chest. App. 231, l 2 – 233, l. 15. The doctor who treated Kelly maintained the wounds to his chest and thigh were potentially left threatening due to the possibility of excessive blood loss. App. 231, l. 20 – 235, l. 9. McCrae was uninjured.

Kelly, Kinloch, and McCrae all claimed none of them were armed that night. App. 182, l. 24 – 183, l. 5; App. 187, ll. 7-9; App. 213, ll. 9-14; App. 242 l. 18 – 243, l. 3. The trio maintained they merely went to Punchy's trailer that night so Kinloch could buy a drink and some loose cigarettes. App. 176, ll. 6-24; App. 211, l. 22 – 213, l. 8; App. 239, l. 24 – 240, l. 5.

A Georgetown County Grand Jury indicted Petitioner on February 25, 2015 for two counts of attempted murder, discharging a firearm into an occupied vehicle, and possession of a weapon during the commission of a violent crime. App. 589-594. His case was called to trial on February 1, 2016 before the Honorable Benjamin H. Culbertson, and a jury. App. 1. Assistant Solicitor Richard Todd represented the state. App. 1. Ronald Hazzard represented Petitioner. App. 1.

Petitioner moved pretrial for immunity from prosecution pursuant to the Protection of Persons and Property Act. App. 51, ll. 2-18. Petitioner's testimony pretrial was consistent with his testimony before the jury. See App. 54, l. 11 – 89, l. 2. In response to Petitioner's motion, the state presented the testimony of Daniea Kelly and Tuvera McCrae. During Kelly's cross-examination, trial counsel impeached Kelly with his prior convictions for possession of a weapon, possession of cocaine, and strong arm robbery. App. 117, l. 22 – 118, l. 8. Counsel also questioned Kelly about his pending charges for which he was then incarcerated. Kelly

admitted he was arrested on October 15, 2015, less than a year after the shooting. Law enforcement stopped his vehicle on that day because they had an active warrant for his arrest for a drug related offense. During a search of his truck, officers discovered two firearms and drugs. Kelly claimed the firearms and drugs found in his truck belonged to the passenger who was also arrested. App. 117, ll. 3-21; App. 119, l. 15 – 120, l. 19.

The trial judge denied Petitioner immunity from prosecution. App. 140, ll. 15-23. Before Kelly testified before the jury, the state moved to suppress evidence of his pending charges and "his current incarceration." App. 142, l. 14 – 145, l. 1. Specifically, the state sought to suppress Kelly's pending charges for "drug distribution, drug possession, and weapons possession." App. 144, ll. 13-17. The solicitor argued Kelly's pending charges were inadmissible pursuant to Rule 403, SCRE, since they were not convictions and the event which led to the charges occurred after the shooting for which Petitioner was being tried. App. 143, ll. 5-20. The solicitor claimed trial counsel sought to admit the charges merely to "destroy [Kelly's] character." App. 143, ll. 6-7.

Trial counsel argued Kelly's pending charges were admissible pursuant to Rule 404(a)(2), SCRE, as evidence of his reputation for "turbulence and violence in the community." App. 145, l. 3 – 146, l. 9. Counsel further argued the pending charges were relevant to Kelly's "credibility and believability." App. 153, l. 15 – 154, l. 5. He cited to State v. Moody, 94 S.C. 26, 77 S.E. 713 (1913) and State v. Franklin, 267 S.C. 240, 267 S.E.2d 240 (1976). App. 154, ll. 5-10.

The trial judge ultimately ruled Kelly's pending charges were inadmissible unless Kelly opened the door to the evidence during his testimony. The judge found the charges were not

relevant because the event which led to the charges occurred ten months after the shooting for which Petitioner was being tried. App. 153, ll. 1-11; App. 157, ll. 19-24.

On cross-examination before the jury, trial counsel impeached Kelly with his prior convictions for strong arm robbery, disorderly conduct, possession of an unlawful weapon, and possession of cocaine. App. 185, l. 18 – 186, l. 24. After Kelly claimed the only time he had ever possessed a gun was related to his prior conviction for possession of an unlawful weapon, trial counsel questioned Kelly about the October 15, 2015 incident where two firearms were found in his vehicle. Kelly denied the guns belonged to him. The following exchange took place:

> Q: Okay. So the only time you've had a gun was May 29th when you were convicted of the offense May 29th of 2007?
>
> A: Yes, sir.
>
> Q: That was the only time?
>
> A: Sir?
>
> Q: That was, that was the only time you ever had a gun in your possession?
>
> A: Yes, sir. That's the only time I ever had a gun in my possession what I've been convicted of.
>
> Q: Okay. Is that the only time you've ever had a gun in your possession?
>
> A: That's the only time I ever had a gun in my possession what I been convicted of, sir.
>
> Q: Okay. So when you were charged October 15th of 2015 for having two guns in your possession you didn't have those guns in your possession?
>
> Mr. Todd [Solicitor]: Objection, Your Honor.
>
> The Court: Overruled.
>
> A: They were in the vehicle. They was not mine, sir.

Q: And whose vehicle were you in?

A: That was in my - - I was in my vehicle, sir.

App. 187, l. 13 – 188, l. 8.

Notably, trial counsel did not question Kelly about the exact weapon charges brought against him or the potential penalty he faced. Counsel also did not question Kelly about his pending drug charges or his sentence exposure for those offenses.

On February 4, 2016, the jury found Petitioner guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), the lesser included offense of third degree assault and battery, discharging a firearm into an occupied vehicle, and possession of a weapon during the commission of a violent crime. App. 472, l. 9 – 473, l. 22. Petitioner was sentenced to twenty years for ABHAN, thirty days for third degree assault and battery, ten years for discharging a firearm into an occupied vehicle, and five years for the weapons offense. All sentences were ordered to be served concurrently. App. 482, l. 22 – 483, l. 10.

The Court of Appeals dismissed Petitioner's direct appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). App. 498-499.

On July 7, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 500-509. The state file a return to this application dated October 5, 2017. App. 510-517. With the assistance of counsel, Petitioner filed an amended application on August 27, 2018 raising the claim argued in this petition. App. 518-519. An evidentiary hearing was convened on March 25, 2019 before the Honorable William H. Seals, Jr. App. 520. Assistant Attorney General Johnny James represented the state. App. 520. James Falk represented Petitioner. App. 520.

During the evidentiary hearing, Ronald Hazzard, Petitioner's trial counsel, testified that he never considered arguing Kelly's pending charges were admissible pursuant to Rule 608(c),

SCRE. App. 530, ll. 9-14. Hazzard confirmed Kelly had pending charges at the time of Petitioner's trial for six counts of distribution of drugs, second offense, and two counts of unlawful possession of a weapon.[1] App. 532, l. 9 – 533, l. He testified that three of the drug distribution charges, since they were second offenses, carried five to thirty years. App. 533, ll. 18-22. While Hazzard admitted he wanted the jury to be aware of Kelly's pending charges to show "he was a bad guy," he never argued the evidence was admissible pursuant to Rule 608(c), SCRE, as evidence of bias. App. 534, l. 5 – 535, l. 10.

By order filed October 5, 2020, the PCR judge denied Petitioner relief. App. 558-588. The judge found trial counsel was not ineffective for failing to argue at trial that Daniea Kelly's pending charges were admissible as impeachment evidence pursuant to Rule 608(c), SCRE, and Petitioner's Sixth Amendment right to confrontation. App. 584. The judge asserted, "Whether trial counsel did or did not make any particular arguments against the state's motion to suppress questioning regarding Kelly's pending charges is of no consequence" since counsel "was ultimately permitted to question Kelly on the subject and argue in closing against Kelly's credibility and for Kelly's propensity to always carry a gun based in part on [Kelly's] pending gun charges." App. 584. The judge concluded that since Petitioner "cannot prove prejudice . . . his request for relief by way of this allegation is denied." App. 584.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated by trial counsel's failure to argue Kelly's pending charges were admissible pursuant to the Confrontation Clause and Rule 608(c), SCRE, as evidence of bias, and since Petitioner was prejudiced because there is a reasonable probability the outcome of his

[1] All of Kelly's pending charges were dismissed on March 16, 2016, about a month after Petitioner's jury trial, as a result of Kelly's death on or about March 9, 2016. App. 542, ll. 3-8.

trial would have been different if this evidence had been admitted, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to argue evidence of Daniea Kelly's pending charges and his sentencing exposure on those charges was admissible pursuant to the Confrontation Clause of the Sixth Amendment and Rule 608(c), SCRE, as evidence of bias, where there is a reasonable probability the outcome of Petitioner's trial would have been different since Kelly's credibility was crucial to the state's case given the state alleged Petitioner shot Kelly with malice and Petitioner asserted he acted in self-defense.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

"The Confrontation Clause provides in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him." State v. Williams, 432 S.C. 515, 522, 854

S.E.2d 166, 169 (Ct. App. 2021) (quoting State v. Gracely, 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012)) (internal quotation marks and alternations omitted); See U.S. Const. amend. VI. "The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias." Id. (quoting Gracely, 399 S.C. at 372, 731 S.E.2d at 885) (internal quotation marks omitted). "A defendant demonstrates a Confrontation Clause violation when he is prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias from which jurors could draw inferences relating to the reliability of the witness." Id. at 522-523, 854 S.E.2d at 169 (quoting State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994)) (internal quotation marks and alterations omitted).

"Evidence of a witness's bias can be compelling impeachment evidence, and for that reason 'considerable latitude is allowed' to defense counsel in criminal cases 'in the cross-examination of an adverse witness for the purpose of testing bias.'" Smalls v. State, 422 S.C. 174, 182, 810 S.E.2d 836, 840 (2018) (quoting State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991)). "Our courts have followed the general rule that anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, so that on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." Id. at 182-183, 810 S.E.2d at 840 (quoting State v. Brewington, 297 S.C. 97, 101, 226 S.E.2d 249, 250 (1976)) (internal quotation marks omitted). "Rule 608(c) of the South Carolina Rules of Evidence preserves this longstanding . . . precedent." Id. at 183, 810 S.E.2d at 840 (quoting State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002)) (internal quotation marks omitted); See State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001).

Rule 608 (c), SCRE, provides, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."

In Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), this Court held trial counsel was ineffective for failing to cross-examine Eugene Greene, a state witness, with his pending carjacking charge, which was dismissed by the prosecutor the morning of the first day of Small's jury trial. Smalls was tried for the armed robbery of a Bojangles restaurant. Green and another employee, Jim Lightner, were closing the restaurant when a man charged in the door wielding a shotgun. Id. at 179, 810 S.E.2d at 838. The man forced Lightner to the back of the restaurant to open the safe. Id. Green escaped out the front door and ran to a gas station across the street where he called the police. Id. While on the phone with the police, Green saw the robber walk out the side service door of the Bojangles carrying the shotgun in one hand and a white bag in the other. Id. The man walked out of a wooden gate near the back of the parking lot just as police arrived at the front of the Bojangles. Id. Although officers were unable to find the suspect at that time, they did find a shotgun and a white bag containing nearly two thousand dollars just outside the gate. Id. A fingerprint expert determined that one of several prints found on the gun belonged to Smalls. Id.

Four days after the robbery, Green identified Smalls in a photographic lineup. Id. at 179, 810 S.E.2d at 839. Lightner, however, could not identify Smalls, but did narrow the suspects down to two people, one of whom was Smalls. Id. At trial, the state introduced Green's pretrial identification of Smalls. Id. Green also testified and identified Smalls in the courtroom. Id.

During a pretrial hearing on the morning of trial, the solicitor asked the trial judge to make preliminary rulings on whether Green's prior convictions would be admissible to impeach

him under Rule 609, SCRE. Id. at 182, 810 S.E.2d at 840. The judge ruled Green's convictions for distribution of crack cocaine, use of a vehicle without permission, and possession of a stolen motor vehicle were admissible. Id. Trial counsel then asked about Green's pending carjacking charge. Id. The solicitor told the judge that carjacking charge had been dismissed that morning. "Apparently not recognizing that the dismissal of the charge was potentially stronger evidence of bias than the charge itself, trial counsel raised no further argument on the issue, and did not ask the trial court to make a ruling as to whether counsel would be permitted to use the carjacking charge or its dismissal to impeach Green." Id.

This Court held Smalls' counsel was deficient for failing to effectively argue that the existence and dismissal of Green's carjacking charge was admissible as evidence of Green's bias. Id. at 181-182, 810 S.E.2d at 840. The Court emphasized that had counsel cross-examined Green on the carjacking charge, she would have demonstrated that the state dismissed a charge that carried up to twenty years in prison on the morning of trial in an apparent effort to secure Green's favorable testimony. Id. at 184, 810 S.E.2d at 841.

In State v. Sims, 348 S.C. 16, 18, 558 S.E.2d 518, 520 (2002), Sims was convicted of murder after a woman was found on her bed in a pool of blood. She had "jagged, gaping cuts in her throat." Id. The decedent's five year old son identified Sims as the individual in the apartment with his mother on the night of the attack. Id. at 20, 558 S.E.2d at 520. Prior to the state's witness, Michael Peterson, taking the stand, defense counsel argued Sims should be allowed to ask Peterson about his pending charges for possession of cocaine base with intent to distribute, robbery, first degree burglary, grand larceny, malicious injury to real property, and possession of a controlled substance. Id. at 23-24, 558 S.E.2d at 522. The trial judge ruled Sims could generally ask whether Peterson had pending charges and whether there was anything

promised him with regard to those pending charges. Id. at 24, 558 S.E.2d at 522. However, Sims was not allowed to question Peterson as to the crimes with which he was charged. Id.

During his direct examination, "Peterson stated he had pending charges in the solicitor's office, but he had not been given a deal or promise of leniency." Id. at 24, 558 S.E.2d at 522-523. However, he acknowledged he had been told, when he proceeded to trial on his pending charges, the solicitor may tell the judge he cooperated. Id. at 24, 558 S.E.2d at 523. Peterson then related what Sims had allegedly told him while the two were together in a holding cell for their bond hearings. Id. Peterson claimed Sims admitted to choking his girlfriend and stabbing her in the neck. Id. On cross-examination, defense counsel questioned Peterson as to what he expected to receive regarding his pending charges in exchange for his testimony. Id. at 25, 558 S.E.2d at 523. Defense counsel also questioned Peterson about his prior convictions. Id.

Sims argued on appeal that the trial judge erred under Rule 608(c), SCRE, by preventing him from cross-examining Peterson about the specifics of the pending charges. Id. "Because of the number of charges pending against Peterson and the severity of the potential sentences," our Supreme Court held the evidence was probative of bias and should have been admitted pursuant to Rule 608(c). Id. The Court concluded, "There was the substantial possibility Peterson would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case." Id.

In State v. Williams, 432 S.C. 515, 854 S.E.2d 166 (Ct. App. 2021), the Court of Appeals held the trial judge erred in limiting Williams's cross-examination of a state witness, Rehem Devoe, regarding Devoe's potential sentencing exposure on his pending charges. The trial judge allowed Williams to question Devoe about the nature of his pending charges pursuant to Rule 608(c), SCRE, but not any potential penalty Devoe faced. Id. at 519, 854 S.E.2d at 168.

Williams was tried for murder after the decedent was shot outside his Allendale apartment. Id. at 518, 854 S.E.2d at 167. Devoe testified that on the night of the murder, Williams picked him up from his uncle's house and, after driving around for a while, they ended up at the apartment complex where the decedent lived. Id. at 520, 854 S.E.2d at 168. Many people were outside the complex when the pair arrived, including the decedent. Devoe claimed he heard a gunshot, turned around, and saw Williams standing over the decedent, who was on the ground. Devoe maintained Williams was holding a handgun. Id.

During his direct examination, Devoe acknowledged he had pending charges for armed robbery and drug possession. When asked about his pending charges by defense counsel, Devoe admitted both charges were from Allendale County and would be prosecuted by the same solicitor's office who prosecuted Williams. Id. Finally, on redirect, Devoe testified the state did not promise him anything or tell him his charges would be dropped in exchange for his assistance in the case against Williams. Id.

On appeal, Williams argued the trial judge erred in preventing him from cross-examining Devoe regarding the potential sentence he faced on the pending armed robbery charge because the possibility of a serious penalty was proper impeachment evidence relevant to Devoe's bias and motive to testify against him. Id. at 522, 854 S.E.2d at 169. The Court of Appeals held the judge "erred in limiting Williams's cross-examination of Devoe because Devoe's potential sentencing exposure on his pending charges impacted his potential bias and motive for testifying." Id. at 524, 854 S.E.2d at 170.

In so holding, the Court of Appeals cited to State v. Pradubsri, 403 S.C. 270, 280, 743 S.E.2d 98, 103-104 (Ct. App. 2013), where the appellate court found the trial judge's refusal to allow Pradubsri to question Martin on the exact potential sentence she faced on each charge was

error because the evidence was critical to showing Martin's potential bias, and Martin's potential legal exposure was relevant to her bias and potential motive in testifying. Williams, 432 S.C. at 524, 854 S.E.2d at 170.

In this case, trial counsel was deficient for failing to argue Daniea Kelly's pending charges were admissible pursuant to the Confrontation Clause and Rule 608(c), SCRE, as strong evidence of bias. Kelly had three counts of distribution of a controlled substance, second offense, which carried five to thirty years each, a single count of distribution of cocaine base, second offense, which carried five to thirty years, two counts of distribution of a controlled substance within proximity of a school, which carried up to ten years each, and two counts of unlawful possession of a weapon, which carried up to five years each, pending at the time of Petitioner's trial.[2] See App. 532, l. 9 – 533, l. 17. Accordingly, Kelly was facing up to one hundred and fifty years imprisonment.

Despite the lengthy prison sentence Kelly was facing, trial counsel failed to argue Kelly's pending charges and sentence exposure were admissible as evidence of bias pursuant to the Confrontation Clause of the Sixth Amendment and Rule 608(c), SCRE. If counsel had raised these grounds at trial, there is a reasonable probability the trial judge would have admitted the evidence, or in the alternative, Petitioner would have been granted relief on direct appeal based on trial court error if the judge had refused to allow counsel to impeach Kelly with this evidence.

Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of his trial would have been different if the jury had been aware of Kelly's pending charges and the significant penalty he faced. Kelly's credibility was crucial to the state's case against Petitioner. Petitioner testified he shot Kelly in self-defense after he had earlier

[2] See S.C. Code Ann. 44-53-370(b)(1); S.C. Code Ann. 44-53-375(B)(2); S.C. Code Ann. 44-53-445(D)(1); and S.C. Code Ann. 16-23-50(A)(1).

observed Kelly hand Kinloch a gun and then later believed Kelly was reaching for a firearm. Kelly on the other hand claimed neither he nor Kinloch were armed that night. There is a substantial possibility Kelly gave biased testimony in the hope that the solicitor's office, the same office who prosecuted Petitioner, would either dismiss Petitioner's charges, offer a favorable plea deal, or highlight to his future trial judge how he had cooperated in the case against Petitioner.

Respectfully, this Court should reverse Petitioner convictions and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully request this Court grant the petition for writ of certiorari and order further briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of May, 2021.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable William H. Seals, Circuit Court Judge

JAMIE L. GILES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001364

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency" dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above referenced case have been served upon William H. Ray, Esquire, at the at the primary e-mail address listed in the Attorney Information System (AIS); and Jamie L. Giles, #324946, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of May, 2021.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER