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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

State v. Plumer, S.C. Ct. App. Op. No. 5806 (filed March 3, 3021)
Court of Appeals Appellate Case No. 2017-000481

The State, ...Respondent,

v.

Ontavious Derenta Plumer,.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

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The Court of Appeals denied Ontavious Plumer petition for rehearing (A. 15-21) by written order dated May 20, 2021 (A. 14).

QUESTIONS PRESENTED

Question 1

Did the Court of Appeals err when it affirmed the trial court's failure to instruct the jurors on self-defense when the jurors acquitted Mr. Plumer of armed robbery and direct and circumstantial evidence supported instructing self-defense?

Question 2

Did the Court of Appeals err when it affirmed the trial court's denial of Ontavious Plumer's motion to relieve his trial counsel from representation and not considering the option of allowing Mr. Plumer to represent himself?

STATEMENT OF CASE

For an incident occurring on October 11, 2015, the State charged Ontavious Plumer with armed robbery, attempted murder, and possession of a firearm during the commission of a violent crime. The Greenwood County Grand Jury returned "true bill" indictments for these charges on July 8, 2016. R. 438-42. On or about December 21, 2016, the State served its notice of intent to seek life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. R. 444.

From February 6-8, 2017, the State tried Mr. Plumer before the Honorable Edward Miller and a jury. Elizabeth White and Josh Thomas, both of the Eighth Circuit Solicitor's Office, represented the State. William Yarborough represented Mr. Plumer. The jurors convicted Mr. Plumer of attempted murder and possession of a weapon during the commission of a violent crime. The jurors acquitted Mr. Plumer of armed robbery. Judge Miller sentenced Mr. Plumer to life imprisonment without the possibility of parole for

attempted murder and five years for possession of a weapon during the commission of a violent crime. The sentences are concurrent. R. 446-47.

Mr. Plumer appealed to the Court of Appeals of South Carolina, raising the following four questions:

1. Did the trial judge err as a matter of law by denying Ontavious Plumer's request for a jury instruction on self-defense when the jurors acquitted Mr. Plumer of armed robbery and direct and circumstantial evidence established the elements of self-defense?

2. Did the trial judge err as a matter of law by denying Ontavious Plumer's motion to relieve his trial counsel from representation and allowing Mr. Plumer to represent himself?

3. Did the trial judge err as a matter of law when by not qualifying Dr. Robert Bennett as expert in gunshot residue when the record establishes the witness has the necessary education, training and experience, and the exclusion of this expert testimony denied Ontavious Plumer his constitutional right to present a complete defense?

4. Did the trial judge err as a matter of law by sentencing Ontavious Plumer to five years imprisonment when S.C. Code Ann. § 16-23-490(A) expressly prohibits imposing an additional sentence with the court imposed a life sentence without the possibility of parole?

A. 47-72.

On February 11, 2020, the Court of Appeals convened an oral argument. On March 3, 2021, the Court of Appeals affirmed the convictions, affirmed the sentence for attempted murder, and vacated the sentence for possession of a firearm during the commission of a violent crime. *State v. Plumer*, 857 S.E.2d 796 (S.C. Ct. App. 2021); A. 1-12. On March 11, 2021, Mr. Plumer petitioned for rehearing. A. 15-21. On March 16, 2021, the State petitioned for rehearing. A. 22-31. On April 7, 2021, the Court of appeals requested the parties file returns to the petitions for rehearing. A. 13. On April 8, 2021, Mr. Plumer filed

his return. A. 32-36. On April 19, 2021, the State filed its return. A. 37-45. On May 20, 2021, the Court of Appeals denied the petitions for rehearing. A. 14.

This petition for a writ of *certiorari* follows.

STATEMENT OF FACTS

Christopher "Jock" Maggiacomo arranged a drug deal between Oshamar Wells and Jamel Brownlee. On October 11, 2015, Mr. Wells met Mr. Brownlee and Ontavious Plumer at the Mr. Chip convenience store on South Main Street in Greenwood, South Carolina. Mr. Brownlee and Mr. Plumer followed Mr. Wells to Kema Moore's house on the west side of Greenwood. Ms. Moore is Mr. Wells' cousin. When they arrived at Ms. Moore's house, the three men sat at the kitchen table. In a cabinet next to the table, only an arm's reach away, Mr. Wells had a handgun he planned to use during the drug deal. The three men "smoked a couple of [marijuana] blunts," as Mr. Wells was letting his buyers try the product. Mr. Wells testified the two men expected him to sell them a pound of marijuana for $3,600.00. R. 13-34, 71-72.

After smoking the blunts, Mr. Wells claims, "instead of pulling out the money," Mr. Plumer pulled out a gun. Mr. Wells "instantly" grabbed a 40-caliber handgun from the kitchen cabinet.[1] According to Mr. Wells, "everything happened so fast" it was a "blur." Mr. Wells testified, "I think I was actually getting hit when I reached to grab the gun out of the cabinet." Mr. Wells fell to the floor. Mr. Plumer "was returning fire" and "stepping

[1] This gun belongs to Mr. Wells' mother, Wenona Wells. On direct examination, Mr. Wells claimed he saw his mother place the gun in the kitchen cabinet earlier in the day. On cross-examination, Mr. Wells acknowledged he planned for the gun to be in the kitchen cabinet in case he needed it during the drug deal. Mr. Wells is not allowed to possess a gun because of his criminal record. R. 21-22, 50, 68, 76-79, 81-83.

back out of the door."[2] Mr. Wells fired his gun five or six times. R. 20-31, 44-46; State's Exhibits 1, 2.

Mr. Wells called an ambulance, his aunt, and his mother, Wenona Wells. Ms. Wells arrived before the ambulance and law enforcement. One of Ms. Wells' grandchildren found the handgun Mr. Wells used to shoot Mr. Plumer. Ms. Wells put that handgun in her purse. She later put it in the trunk of her car, where it remained until her son asked her to deliver it to Investigator Wesley McClinton a couple of days later. R. 74-87, 233-34, State's Exhibit 10.

Officer Kerry Cooper of the Greenwood Police Department was the first law enforcement officer to arrive. He tried to get a description of possible suspects from Mr. Wells to provide to other patrol officers in the area. Mr. Wells said he was robbed by "two black males and that one was wearing a white tee shirt," but he did not provide any other specifics. Mr. Wells denied having a firearm, and he did not tell Officer Cooper about the drug deal. EMS arrived and transported Mr. Wells to the hospital. Officer Cooper secured the scene to be processed for evidence. R. 87-93, 100-04.

At the hospital, continued to conceal his culpability in the confrontation when he told Greenwood Police Department Officer Patrick Durkin that two black males entered the residence, "told him to give it up," and began shooting. Officer Durkin photographed Mr. Wells' injuries and collected gunshot residue samples. R. 228-45.

[2] Mr. Plumer went to the Greenville Memorial Hospital in Greenville, South Carolina for treatment of his gunshot wounds. Deputy Andrew Reese of the Greenville County Sheriff's Office interviewed Mr. Plumer, who said he had been shot at a location in Greenville County. R. 107-11.

Dr. Ricky Ladd, an emergency room physician at Self Regional Hospital, treated Mr. Wells' gunshot wounds. Mr. Wells had three entrance wounds and three exit wounds. Mr. Wells had two fractures in his hip and leg. A bullet transacted the femur neck. The second fracture below that area could have been caused by a bullet or by a fall. Dr. Ladd explained the bullet traveling through the femoral neck, which is a weight baring bone, would have caused Mr. Wells to immediately fall to the floor. R. 282-97.

Investigators located a black Mercedes Benz at Mr. Moore's residence. According to Department of Motor Vehicle records, the license tag for the black Mercedes Benz is registered to Walter Plumer of Starr, South Carolina, which is in Anderson County. Investigators Wesley McClinton and Mike Dixon spoke to Walter Plumer at this home, and he provided a written statement. Walter Plumer is Ontavious Plumer's grandfather. Walter Plumer initially denied knowing who was driving his Mercedes Benz and reported it stolen. He later acknowledged allowing his grandson, Ontavious Plumer, drive his Mercedes Benz on October 11, 2015. Mr. Plumer acknowledged being at Ms. Moore's residence and being shot. R. 128-30, 174-77, 181-83, 194-95.

Investigators Wesley McClinton and William Kay interviewed Mr. Wells at Self Regional Hospital in Greenwood. By his own admission, Mr. Wells did not tell the investigators the truth because he was afraid of getting into trouble. Mr. Wells initially told law enforcement "he was sitting at the kitchen table and two random guys came in the front door and tried to rob him, and that they ended up shooting him when he didn't have anything." Mr. Wells told law enforcement about the drug deal only after law enforcement confronted him about finding the Mercedes Benz driven by Mr. Plumer. Investigator McClinton testified about Mr. Wells' second statement:

> The story was a drug deal was set up. He had met the two individuals at Mr. Chip. They followed him to the house on [redacted]. They were sitting at the table smoking marijuana and talking about the marijuana. [Mr. Wells] produced the marijuana and looked to who he said was Mr. Plumer to get the money and instead of pulling out the money Mr. Plumer pulled out a handgun and began firing at him.

R. 130-32.[3] Investigator Kay, however, recalled Mr. Wells admitting he reached for his gun before Mr. Plumer started shooting. Investigator Kay testified Mr. Wells said "he was meeting two guys to sell them a quantity of marijuana and that they ended up trying to rob him, and during the robbery he reached for a gun to defen[d] himself and they began shooting and he returned fire."[4] Mr. Wells ultimately identified Mr. Plumer in a six-person photograph lineup. R. 26-29, 59-60, 115-19, 132-33; State's Exhibit 8.

Investigator Mike Dixon of the Greenwood Police Department obtained a search warrant to process Kema Moore's house. R. 178-80. Kenya Griffin, who is the crime scene and evidence technician for the Greenwood Police Department, processed Ms. Moore's house for evidence. After photographing the residence, Officer Griffin collected numerous shell casings and projectiles. Officer Griffin also obtained a DNA sample from Mr. Plumer. Additionally, Officer Kerry collected a projectile from a residence across the street and provided it to Officer Griffin. Investigator McClinton collected a blood sample from the sidewalk in front of the residence and provided it to Sargent Griffin. Sargent Griffin transferred this evidence to the South Carolina Law Enforcement Division ("SLED"). R. 164-65, 200-215.

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[3] At some point, Mr. Wells told law enforcement that both Mr. Plumer and Mr. Brownlee "produced handguns and commenced shooting him striking him numerous times." R. 136.

[4] Mr. Plumer wanted to play Mr. Wells' recorded statements for the jurors, but the trial judge sustained the solicitor's objection. R. 154-56.

Tracey Thrower, a firearms examiner at SLED, determined at least two firearms were involved in the confrontation. Ten cartridge cases and two projectiles were fired by the handgun used by Mr. Wells. Agent Thrower determined that two projectiles were not fired by Mr. Wells gun, but the examination could not determine whether these two projectiles were fired by the same gun. Agent Thrower determined six cartridge casings were fired by a gun other than the one fired by Mr. Wells. These six cartridge casings were fired by the same gun. Agent Thrower's examined an additional projectile but the result was inconclusive whether it was fired by Mr. Wells gun or another gun. R. 252-69.

Jennifer Clayton, a DNA analyst at SLED, determined the blood collected by Investigator McClinton from the sidewalk in front of Ms. Moore's residence matched the know DNA standard from Mr. Plumer. R. 269-75.

Megan Fletcher, a forensic scientist with SLED with training and experience analyzing gunshot residue, testified the Solicitor's Office requested SLED ***not*** conduct an analysis of the gunshot residue kit collected from Mr. Wells. She also testified that SLED never received the gunshot residue kit collected from Mr. Plumer. R. 236-52. The trial court judge sustained the State's objection to Dr. Robert Bennett testifying as an independent gunshot residue analyst. R. 356-66.

ARGUMENTS

Question I

Did the Court of Appeals err when it affirmed the trial court's failure to instruct the jurors on self-defense when the jurors acquitted Mr. Plumer of armed robbery and direct and circumstantial evidence supported instructing self-defense?

Mr. Plumer requested the trial judge instruct the jurors about the law of self-defense, but the trial judge declined. R. 371-73. In the Court of Appeals, Mr. Plumer argued

the trial judge erred by not charging self-defense when the jurors acquitted him of armed robbery and, based on the evidence at presented at trial, reasonable jurors could have concluded Mr. Wells was responsible for bringing on the difficulties and Mr. Plumer was justified in defending himself. He identified the evidence that supported instructing self-defense. A. 59-62. The State contended "the evidence and testimony presented during at trial did not establish any of the required elements of self-defense." The State relied on Mr. Wells testimony that Mr. Plumer pulled out a gun and attempted to rob him. The State also relied on Mr. Plumer's failure to testify. A. 88-96. The Court of Appeals agreed with the State and held "the only evidence presented at trial suggested that Plumer was at fault for bringing on the difficulty." A. 5-8. In his petition for rehearing, Mr. Plumer argued, the Court of Appeals shifted the burden to him to prove self-defense, imposed a requirement that an accused testify or call witnesses in order to receive a self-defense instruction, and did not give proper consideration to the evidence that supported instructing self-defense. A. 15-3.

"The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] 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). *And see State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) ("The evidence presented at trial determines the charged jury instruction. The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict." (internal citations and quotations omitted)). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." *State v. Day*, 341

S.C. 410, 416-17, 535 S.E.2d 431, 434 (2000) (quoting *State v. Muller,* 282 S.C. 10, 316 S.E.2d 409 (1984)). "[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (citing *State v. Wiggins*, 330 S.C. 538, 544-45, 500 S.E.2d 489, 492-93 (1998)). A person is justified in using deadly force in self-defense when:

> (1) The defendant was without fault in bringing on the difficulty; (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998) (citing *State v. Davis,* 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

The facts set forth herein support this claim and, by this specific reference, the allegations raised elsewhere in this pleading and the filings in the Court of Appeals, relevant to this claim, are fully incorporated herein.

As set forth in Mr. Plumer's Final Brief of Appellant, at 10-11, seven facts establish that a self-defense instruction was required in this case. First, Mr. Wells admitted he was prepared to use his handgun during the drug transaction. Second, Mr. Wells placed himself in a location where he could stand up and his gun would be within an arm's reach. Third, Investigator Kay recalls Mr. Wells saying he reached for his gun before any shots were fired by Mr. Plumer. Fourth, according to Dr. Ladd, Mr. Wells would have fallen down

when a bullet broke his femoral neck, meaning Mr. Wells had stood up and retrieved his handgun prior to that shot that broke that bone was fired. Fifth, Mr. Wells and his mother conspired to hide the gun and cover up his culpability in this incident, which is circumstantial evidence of a consciousness of guilt. *See, e.g., State v. Pace*, 337 S.C. 407, 415, 523 S.E.2d 466, 470 (Ct. App. 1999) ("As a general rule, any act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt."). Sixth, Mr. Wells testimony provides evidence Mr. Plumer retreated from the confrontation. Seventh, the jurors acquitted Mr. Plumer of armed robbery, thereby removing the prosecution's motive for Mr. Plumer to commit attempted murder, including the inference of malice arising from shooting someone during the commission of another crime. *See, e.g*., *Gore v. Leeke*, 261 S.C. 308, 315, 199 S.E.2d 755, 757 (1973) ("The law itself implies the malice from proof of the felony.").

Although acknowledging these facts, the Court of Appeals improperly weighed those facts. The inquiry is not whether the appellate court believes Mr. Plumer was defending himself, but rather whether there is any evidence to support instructing self-defense. *State v. Light*, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008); *see also Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988) ("petitioner presented sufficient evidence at trial to entitle him to a jury instruction on self-defense"). There is not requirement that the evidence supporting any jury instruction—including a self-defense jury instruction—come from the accused or a witness called by the accused.

The Court of Appeals also shifted the burden to Mr. Plumer to prove he was defending himself by requiring him to "establish" or prove "elements" of self -defense. A. 6 (citing *State v. Slater*, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007)). Although citing

Slater for the "elements" of self-defense, these "elements" have been part of our state's jurisprudence going back, at least, to *State v. Hendrix*, 270 S.C. 653, 657–58, 244 S.E.2d 503, 505-06 (1978). It is elementary that "elements" identify what a party must prove in order to prove a claim or offense. Indeed, our Supreme Court decided *Hendrix* during an error when an accused had the burden of proving self-defense. Today, a "defendant need not establish self-defense by a preponderance of the evidence but must merely produce evidence which causes the jury to have a reasonable doubt regarding his guilt." *State v. Bellamy*, 293 S.C. 103, 105, 359 S.E.2d 63, 64-65 (1987), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *see also In re Winship*, 397 U.S. 358 (1970). "Once raised by the defense, the State must disprove self-defense beyond a reasonable doubt." *State v. Bixby*, 388 S.C. 528, 553, 698 S.E.2d 572, 585 (2010) (citing *State v. Burkhart,* 350 S.C. 252, 260, 565 S.E.2d 298, 302 (2002)).

Based the facts presented in this case, reasonable jurors could infer that Mr. Wells was the first person to introduce a firearm into the encounter, meaning Mr. Wells—not Mr. Plumer—was responsible for bringing on the difficulty. Once Mr. Wells introduced his handgun into the encounter, Mr. Plumer and Mr. Brownlee actually were in imminent danger of sustaining serious bodily harm or death. A reasonable person would have entertained such a belief. Under the circumstances, Mr. Plumer and Mr. Brownlee were justified in returning fire. Finally, it is not disputed that Mr. Plumer and Mr. Brownlee retreated from the incident location.

The trial judge seemingly believed Mr. Plumer was guilty of attempted murder and armed robbery and involved himself in plea negotiations.[5] When Mr. Plumer wanted to continue his trial, the trial judge scolded Mr. Plumer, "Sometimes pride can be a real dangerous asset to have." R. 319. From the record it is not clear whether the trial judge wanted Mr. Plumer to plead guilty because of the trial judge's personal beliefs about Mr. Plumer's guilt or out of a "paternalistic" desire to protect Mr. Plumer from the mandatory life without parole sentence.[6] R. 312. Regardless of his intentions, the trial judge never considered the possibility that Mr. Wells was responsible for the difficulty, and Mr. Plumer was innocent of armed robbery. *See, e.g. State v. Niles*, 400 S.C. 527, 532, 735 S.E.2d 240, 243 (Ct. App. 2012) ("The circuit court charged the jury on self-defense. . . . reasoning that 'either the victim started shooting and Mr. Niles was acting in self-defense or Mr. Niles started shooting ... [and] killed the victim during the commission of an armed robbery.'")

[5] Our Supreme Court has adopted the American Bar Association's Criminal Justice Standard 13-3.3, Guilty Pleas, Responsibility of the Trial Judge. *Harden v. State*, 276 S.C. 249, 250, 277 S.E.2d 692 (1981); *Medlin v. State*, 276 S.C. 540, 280 S.E.2d 648 (1981). Under this rule, the trial judge may participate in plea negotiations, but "the judge should never through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered." *Medlin,* 276 S.C. at 542, 280 S.E.2d at 649. "The Standard is designed to prevent both the fact and the appearance of the trial judge's becoming an advocate against the desires of the defendant or the State of a particular resolution." *Harden*, 276 S.C. at 257, 277 S.E.2d at 695. "Due to the force and majesty of the judiciary, a trial court's participation in the plea negotiation may skew the defendant's decision-making and render the plea involuntary because a defendant may disregard proper considerations and waive rights based solely on the trial court's stated inclination as to sentence." *McDaniel v. State*, 271 Ga. 552, 553, 522 S.E.2d 648, 650 (1999).

[6] *See, e.g., State v. Rivera*, 402 S.C. 225, 243, 741 S.E.2d 694, 703 (2013) ("It is apparent the trial court, like defense counsel, was operating under the paternalistic belief that it wanted to protect Appellant from potentially undermining his own defense.").

reversed on other grounds by State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015). This Court, accordingly, should grant the writ and consider the issue.

Question II

Did the Court of Appeals err when it affirmed the trial court's denial of Ontavious Plumer's motion to relieve his trial counsel from representation and not considering the option of allowing Mr. Plumer to represent himself?

During his jury trial, Mr. Plumer moved for the trial court to relieve his counsel. R. 311-18. On appeal, Mr. Plumer argued the trial judge should have treated his motion as a request to represent himself. A. 63-65. The State argued Mr. Plumer's "request was untimely and did not constitute a clear and unequivocal assertion to his right of self-representation." A. 97-105. The Court of Appeals agreed with the State and held Mr. "Plumer did not clearly assert his right to self-representation."[7] A. 8-9. In his petition for rehearing, Mr. Plumer pointed out the trial judge incorrectly informed Mr. Plumer he has just two options—pleading guilty or continuing the trial with his trial counsel—when a third option existed—continuing the trial and allowing Mr. Plumer to represent himself. A. 3-4 (citing *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012) (trial judges have an obligation to "safeguard the rights of litigants")).

"A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions." *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing *State v. Starnes,* 388 S.C. 590, 698 S.E.2d 604 (2010)). The trial judge should have treated Mr. Plumer's insistence to relieve his trial counsel as a

[7] Although the Court of Appeals cited caselaw suggesting the request for self-representation must be made "prior to trial," A. 8-9 (citing *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010)), the court below did not base its opinion on this ground.

motion to represent himself. Mr. Plumer, in fact, correctly stated he has the constitutional right to relieve his trial counsel at any time. *Faretta v. California*, 422 U.S. 806 (1975).

The facts set forth herein support this claim and, by this specific reference, the allegations raised elsewhere in this pleading and the filings in the Court of Appeals, relevant to this claim, are fully incorporated herein.

At the close of the second day of trial, the trial judge informed Mr. Plumer, "[T]he consequences of life without parole are just hard to enumerate." At the beginning of the third day of trial, Mr. Plumer moved the trial judge to relieve his trial counsel. Mr. Plumer explained the last offer from the state was for a term of imprisonment of seven years. Trial counsel had informed Mr. Plumer he "shouldn't worry about the life sentence because if I get found guilty of attempted murder that they was going to give me a lot of time anyway." Mr. Plumer further explained he did not understand that the life sentence was mandatory until the trial judge informed him the prior day. The colloquy between the trial judge, prosecutor, and trial counsel, revealed trial counsel's failure to communicate clearly with Mr. Plumer. The following exchange took place between Mr. Plumer and the trial judge:

> THE COURT: "Do you want to go forward with this trial?"
>
> THE DEFENDANT: I want to get me another lawyer.
>
> THE COURT: No, that ain't happening. The jury is sworn. We are in the middle of your case. I'm not relieving him and we're not stopping this case so you can get a new lawyer. You want to go forward with this trial?
>
> THE DEFENDANT: Yes, sir. I don't have no choice.
>
> THE COURT: You do have a choice and you know what it is.
>
> THE DEFENDANT: ***I have a constitutional right to relieve my lawyer when I want to relieve him***, but I guess that don't – that ain't work like that down here.

> THE COURT: So you want to go forward with this? You know what your options are.
>
> THE DEFENDANT: I don't have a choice.
>
> THE COURT: You know what the options are that were discussed yesterday in the bench conference. The State would be willing to lift the life without parole notice in return for a guilty plea, so – and you – but you want to go forward to the jury; is that right?
>
> THE DEFENDANT: I don't have a choice.
>
> THE COURT: You do have a choice, and it's your choice and yours alone. You said you wanted to talk to your family.
>
> THE DEFENDANT: I talked to more than my family though.
>
> THE COURT: Okay. So you want to go forward; is that right?
>
> THE DEFENDANT: Yes, sir. I ain't got no choice. I can't –
>
> THE COURT: Stand up when you talk to me.
>
> THE DEFENDANT: Obviously the Court don't believe nothing I'm saying anyway about me being able to get – my disability. They ain't believing nothing about that. You're going to believe what my lawyer said about it. But it's my life on the line and I know what was told to me— and I know how I took it and I understood. So, I mean, I don't have no choice but to go forward with it. And my constitutional rights being violated the whole time I've been down here. So let's go on with the trial.

R. 311-18 (emphasis added).

Here, the attorney-client relationship had deteriorated because of the lack of communication. The trial judge incorrectly told Mr. Plumer his only options were to plead guilty or continue the trial. Mr. Plumer correctly informed the trial judge his only choice as to continue trial. Had Mr. Plumer allowed the trial judge to persuade him to plead guilty, then the jurors would not have acquitted Mr. Plumer of armed robbery, and this issue—and the other issues raised in the brief—would not have been preserved for appeal. Continuing the trial presented the trial judge two options. First, trial counsel would

continue representing Mr. Plumer through the conclusion of the trial. Second, after giving Mr. Plumer his *Faretta* warnings, the trial could have continued with Mr. Plumer representing himself. The trial judge chose the former option, which denied Mr. Plumer his Sixth Amendment right to represent himself. This Court, accordingly, should grant the writ and consider the issue.

CONCLUSION

For the foregoing reasons, this Court should grant the writ and consider the issues.

Respectfully Submitted,

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June 21, 2021
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