

**RECEIVED**

**Aug 09 2021**

**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

---

Appellate Case No. 2021-000643

---

The State, ..... Respondent-Petitioner,

v.

Ontavious Derenta Plumer, ..... Petitioner-Respondent.

---

**REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

*Attorney for the Petitioner Ontavious  
Plumer*

**TABLE OF CONTENTS**

Table of Contents ..... i

Table of Authorities ..... ii

In Reply

*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? .....1

*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? .....2

Conclusion .....3

Certificate of Service .....4

## TABLE OF AUTHORITIES

### Cases

<i>State v. Crisp</i> , 362 S.C. 412, 608 S.E.2d 429 (2005).....	2
<i>State v. Day</i> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	1
<i>State v. King</i> , 422 S.C. 47, 810 S.E.2d 18 (2017).....	2
<i>State v. Muller</i> , 282 S.C. 10, 316 S.E.2d 409 (1984).....	1
<i>State v. Niles</i> , 400 S.C. 527, 735 S.E.2d 240 (Ct. App. 2012).....	2
<i>State v. Norris</i> , 285 S.C. 86, 328 S.E.2d 339 (1985).....	1

## IN REPLY

### *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?**

Ontavious Plumer contends the trial judge erred by failing to instruct the jurors about the law of self-defense. The State disagrees because of the testimony by Mr. Wells—which was not believed by the jurors—that Mr. Plumer first produced a gun and attempted to rob Mr. Wells. The State further asks this Court to disregard the jurors' verdict acquitting Mr. Plumer of armed robbery. In doing so, the State—like the Court of Appeals—applies its view of the evidence rather than the standard of review, to wit: “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)). Disagreeing with inferences from the evidence that are contrary to their views of the evidence is a legally insufficient reason to deny Mr. Plumber a jury instruction on self-defense.

As seen, the State further asks this Court to disregard the jurors' verdict acquitting Mr. Plumer of armed robbery. Yet, by continuing to rely on Mr. Well's testimony that Mr. Plumer tried to rob him, the State still seeks to benefit from the permissive inference that may arise from the commission of a separate felony. *See, e.g., State v. Norris*, 285 S.C. 86, 92, 328 S.E.2d 339, 342 (1985), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), and *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Despite the State's contention to the contrary, the jurors'

acquittal of Mr. Plumer of armed robbery is an indication they did not believe this testimony and, therefore, the State is not entitled to that permissive inference.<sup>1</sup>

As discussed in Mr. Plumer’s petition for a writ of certiorari, neither the trial judge nor the Court of Appeals 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.’”).

### *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?**

Ontavious Plumer contends the trial judge should have allowed him to discharge his trial lawyer and represent himself. The State disagrees, contending Mr. Plumer did not unequivocally request to represent himself. The record before this Court, however, demonstrates Mr. Plumer unequivocally requested to exercise his constitutional right to relieve his counsel. In response, the trial judge incorrectly told Mr. Plumer his only options were to plead guilty or continue the trial. This Court ordinarily expects trial judges to correctly advise the accused. *See, e.g., State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005).

---

<sup>1</sup> This permissive inference of malice only gets the prosecution so far. Of course, the State still has the burden of proving a specific intent to commit murder and express malice. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017).

The trial judge should have given Mr. Plumer the option to continue the trial representing himself.

### CONCLUSION

For the reasons set forth in Ontavious Plumer petition for a writ of certiorari and this pleading, this Court should grant the writ and consider the issues.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

***Attorney for Petitioner Ontavious Plumer***

August 9, 2021  
Greenwood, South Carolina