STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to Marion County
Court of Common Pleas

Honorable William H. Seals, Jr., Trial Judge
Honorable Michael G. Nettles, Post-Conviction Relief Judge

Appellate Case No. 2018-002169

Edward W. Stackhouse,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ISSUES PRESENTED

I. Trial counsel erred in failing to object to two instances of improper bolstering from the solicitor during closing argument: one of which occurred when the solicitor improperly vouched for the credibility of the state's only two eyewitnesses in the case, and the other when the solicitor presented his personal opinion to the jury in order to confirm petitioner's guilt.

II. Trial counsel erred in failing to develop a self-defense claim on petitioner's behalf and to present the same at trial where the facts supported such a defense and where the trial judge issued an unsolicited jury instruction on self-defense.

RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED

I. Did the PCR court correctly find trial counsel was not constitutionally ineffective for failing to object to the solicitor's closing argument on the basis of improper bolstering where the State is allowed to argue its version of the facts to the jury, and the solicitor did not imply he had an personal knowledge regarding the witnesses' truthfulness beyond what was presented to the jury?

II. Did the PCR court correctly find trial counsel was not constitutionally ineffective for failing to present a defense of self-defense at trial where trial counsel determined Petitioner's version of events did not constitute self-defense and instead argued the defense of accident, and where the trial court, *sua sponte*, charged self-defense so Petitioner received the benefit of a self-defense instruction anyway?

STATEMENT OF THE CASE

Edward W. Stackhouse (Petitioner) is incarcerated with the South Carolina Department of Corrections. Petitioner was indicted at the February 2011 term of the Marion County Grand Jury for murder (2011-GS-33-0061), attempted murder (2011-GS-33-0061), assault and battery of a high and aggravated nature (2011-GS-33-0061), and possession of a weapon during commission of a violent crime (2011-GS-33-0061). Scott Floyd, Esquire, represented Petitioner. Solicitor E.L. Clements, III, prosecuted the case on behalf of the State.

Petitioner proceeded to trial on May 15-17, 2012, before the Honorable William H. Seals, Jr., and a jury. The jury convicted Petitioner of murder, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. However, the jury found Petitioner not guilty of attempted murder. On May 17, 2012, Judge Seals sentenced Petitioner to imprisonment for life without the possibility of parole for murder, twenty years for assault and battery of a high and aggravated nature to be served consecutively, and five years for possession of a weapon, to be served concurrently to the other sentences.

Counsel filed a notice of appeal on Petitioner's behalf, and appellate counsel, Robert Dudek, of the Office of Appellate Defense, perfected an appeal was pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Petitioner's convictions and sentences. State v. Stackhouse, Op. No. 2014-UP-051 (Filed February 5, 2014). The remittitur issued February 24, 2014.

Petitioner timely commenced his post-conviction relief action on March 11, 2014, and, through counsel, filed amendments on January 25, 2015. Respondent made its return on July 7, 2016. An evidentiary hearing on the matter convened on January 30, 2018, at the Florence County Courthouse before the Honorable Michael G. Nettles. Petitioner was present at the hearing and

represented by Jonathan Waller, Esquire. By order filed November 9, 2018, Judge Nettles denied relief and dismissed Petitioner's application with prejudice.

Petitioner timely appealed the denial of his application for post-conviction relief, and appellate counsel perfected an appeal by filing a petition for writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), on September 17, 2019. The Supreme Court then transferred this matter to this Court via order dated November 1, 2019. By order dated June 22, 2021, this Court denied appellate counsel's request to be relieved and directed briefing on the issue of whether the PCR court erred in finding "trial counsel was not ineffective for failing to object to the solicitor's closing argument as improper vouching when the State referenced the credibility of two eyewitnesses" and "any other questions of arguable merit."

STATEMENT OF THE FACTS

On September 17, 2010, Officer Ken Alford of the Mullins Police Department responded to a call at Meadow Park Apartments where Applicant; his wife, Sharon Stackhouse; and her two sons lived. App. pp. 95-96. When Alford arrived at the apartment he was met by a young boy who was bleeding from a wound to the head. App. p. 96. The boy began screaming, "Please help my mama" at Alford repeatedly. App. p. 97. Alford gave the boy some basic first aid, then approached the apartment. App. p. 97.

Officer Alford testified he "could see a large knife with a wooden handle laying in front of the couch on the floor" from outside. App. p. 97. He entered the apartment with another police officer, and they saw a cell phone broken into "a bunch of pieces" on the hallway floor. App. pp. 97-98. In the back bedroom, Alford discovered the body of "a small-stature black lady" with "blood on the left side of her body." App. p. 101. According to Alford, "it seemed it like she had on more than just one set of clothing." App. p. 101. The woman was not moving or breathing. App. p. 101. Alford took possession of the knife until the evidence technician from SLED arrived on the scene to collect it. App. p. 107.

Officer Alford then testified he left the apartment to wait on paramedics, and as he began writing a crime scene log, a second young boy came running up to the scene screaming. App. pp. 101-04. Officer Alford testified the boy said, "He hurt my mother, he hurt my mother," and when he saw the officers putting up crime scene tape, the boy started screaming, "Edward Stackhouse killed my mama." App. p. 105. Alford got a description of Stackhouse from the boy and put it out over the radio. App. pp. 105-06. According to Alford, the boy told him Stackhouse was wearing jean shorts, a white shirt, and white Air Jordan shoes with a red logo on the side. App. p. 106.

Timothy Harrellson, the first paramedic on the scene, testified he quickly checked both the injured boy and the woman inside, and upon determining the woman was deceased, focused his efforts on treating the child. App. p. 117. Harrellson testified the boy was in critical condition with a serious, large laceration to the right side of his head and neck. App. p. 118. Harrellson testified the boy was bleeding profusely, so medics called for helicopter to transport him to the closest trauma center. App. p. 120.

Adam Rogers, the EMS supervisor for Marion County, also responded to the 911 dispatch on September 17. App. p. 158. Rogers testified he went to confirm the female victim was deceased and notice a large amount of blood next to the body on the bed, with a single stab wound on the left side of the chest below her armpit. App. p. 160. Rogers explained, based on the location of the wound, the knife likely hit the victim's heart and lung, causing rapid blood loss and death. App. pp. 164-66. After confirming the female victim was deceased, Rogers went outside to administer first aid to the young boy. App. p. 166. According to Rogers, the boy had "an obvious puncture stab wound to the right flank and also a stab wound to the back of the neck." App. p. 166. Rogers testified he was concerned about the location of both wounds, but particularly the wound to the abdomen, so he called for a helicopter to transport the boy to the hospital trauma center. App. pp. 167-70. Rogers testified he considered the boy's injuries to be life-threatening. App. pp. 170-71.

Officer Mark Collins, with the Marion County Sherriff's Office, testified he received a call from his boss on September 17 informing him the Mullins Police Department needed assistance and directing him to go to the Mullins police station. App. p. 135. Collins testified, as he was driving through town, he passed a black male wearing a light-color shirt and jeans on a red and white bicycle. App. p. 136. Almost simultaneously, Collins received another call advising him

the Mullins Police Department was looking for a suspect fitting that description, so Collins turned around, located the man, and asked to speak with him. App. p. 136. The man confirmed he was Edward Stackhouse, and Mullins Police Chief Kenneth Davis arrived at the scene, placed the man under arrest, and read his Miranda rights. App. p. 137.

Chief Davis testified the only question he asked Applicant at the time of his arrest was whether Applicant needed medical attention. App. pp. 288-89. However, according to Davis, Applicant said he had a question, and after being reminded anything he said could be used against him should he decide to speak, Applicant asked Davis, "Did anyone survive?" App. pp. 293-94. Chief Davis testified, at that time, Applicant had not been told anything about why he was being arrested other than that police wanted to speak with him about an incident that had occurred "down the street" earlier that morning. App. p. 294. When Chief Davis responded "it didn't look good for one of the parties," Applicant asked if it was "Sharon." App. pp. 295. Chief Davis testified the exchange "struck him," and he had never been asked a question like that in his time as a law enforcement officer. App. p. 295.

Chief Davis further testified he ordered one of his officers to take Applicant to a waiting room in the police station and prohibited anyone from question Applicant. App. p. 296. Chief Davis testified Applicant was fed, given something to drink, and a change of clothes while officers gathered some resources and started putting together a case file. App. pp. 296-99. A few hours later, Chief Davis and Captain Michael Bethea interviewed Applicant on camera in Bethea's office at the station.[1] App. pp. 299-300. Chief Davis testified Bethea again read Applicant the Miranda warnings, and Davis himself asked Applicant if he understood and if Applicant wanted to speak with them. App. pp. 300-01. Applicant agreed to talk to the officers and gave a statement over

[1] Captain Bethea also testified and confirmed Chief Davis's testimony. App. pp. 190-99.

the course of approximately one hour, all of which was recorded and a redacted version played for the jury. App. p. 301.

Davis testified Applicant told him the fight with Sharon began when Applicant was on the phone, and she thought he was talking to another woman. Davis recalled Applicant told him "an argument that ensued from that, and he indicated to us that they fought down the hallway. They wound up in the bedroom and. . . he was knocked to the floor by Daquan [the victim's oldest son], and [Applicant] indicated that when he fell to the floor he came upon a knife and. . . he switched hands with the knife and he came up defending himself, he said 'slashing,' because. . . he was scared they might hurt him." App. pp. 302-03. Applicant never admitted he stabbed Sharon, but he demonstrated on the videotape how he attempted to defend himself by swinging the knife. App. p. 303. According to Davis, Applicant said he eventually realized something was wrong because she stopped fighting him. Applicant further told Davis that Daquan, "came in and knocked him down during the confrontation. . . and he was scared that Daquan and Sharon might hurt him and. . . he figured he hit Daquan or had hurt Daquan or nicked Daquan. . . because Quan jumped back and said, 'Ow.'" App. pp. 304. According to Davis, he asked Applicant multiple times if either victim had a weapon, and Applicant admitted neither did. App. p. 304. However, Applicant claimed his wife had stabbed him once before and had hit him with a hammer or threatened to hit him with a hammer on a prior occasion. App. p. 316.

Daquan, the male victim and Applicant's oldest stepson, testified he was fifteen years old at the time the incident took place. App. pp. 336-37. Daquan testified on the day of the incident he heard "a lot of noise bumping against the wall, and I looked up out of the corner of my eye and I seen [sic] [Applicant] come back from the kitchen with a knife. And my momma called me. So I got up, me and my brother, I went in there. [The brother] went out the door. I seen [sic]

[Applicant] stabbing her right in the abdomen right here. So I grabbed his hands. . . and that's when I guess he cut me. . . ." App. pp. 338-39. Daquan testified when he grabbed Applicant's hands, Applicant turned toward him, grabbed his head and cut his neck, then stabbed him in the right side. App. pp. 341-42. According to Daquan, Applicant then turned around and walked away down the hallway, took his bike from the living room, and left the apartment. App. p. 343. Daquan denied either he or his mother had a weapon at the time of the attack. App. pp. 348-49. On cross-examination, Daquan admitted he did not tell police, in his statement given a few days after the attack, that he had seen Applicant coming from the kitchen with the knife in hand. App. p. 352. He also agreed his statement indicated he witnessed the stabbing, but actually he had only entered the room once the knife was already in the victim's body. App. pp. 357-58.

William, Daquan's younger brother, was fourteen years old at the time of the stabbing. App. p. 324. He testified he and Daquan were asleep in their room when they heard "a large noise," like things were "crashing and falling hitting the floor." App. p. 325. They heard their mother calling for Daquan, so they both got up and ran toward her bedroom. App. p. 325. William testified he stopped at the doorway and then immediately left to go get help. App. p. 325. According to William, when he looked into the bedroom, he saw Daquan and Applicant "tussling," and Applicant had something in his hands, but William could not tell what the object was. App. pp. 325-26. William testified Daquan and Applicant were standing up, and he never saw either of them on the floor. App. p. 326.

The pathologist who performed the autopsy, Dr. Ellen Riemer, testified Sharon died from a single stab wound to the chest. App. p. 259. She further testified "[t]his was a non-survivable injury because there were too many essential vital structures that were severely damaged including the heart and both lungs and the aortic pump. There's no way that anybody would have been able

to recover from that even if there was an expert team of surgeons at the scene." App. pp. 259-60. According to Dr. Riemer, there were no other wounds, defensive or otherwise, on Sharon's body. App. p. 258.

Mary Boehm, a DNA analyst with SLED,[2] testified she took swabs from the knife to be tested for blood and compared them to known samples from Applicant, Sharon, and Daquan. App. pp. 83-84. Boehm testified there was DNA from two different people on the knife; she confirmed Sharon's blood was on the knife and Daquan could not be excluded as the other contributor, but Applicant's DNA was not present. App. pp. 84-85. Boehm also tested cuttings from Applicant's t-shirt, which returned with a mixture of DNA from Applicant, Sharon, and Daquan. App. pp. 85, 88.

The judge charged the jury on the law of murder, self-defense, voluntary manslaughter, and involuntary manslaughter in Sharon's death. He also charged attempted murder, assault and battery of a high and aggravated nature, and other lesser-included assault offenses as to Daquan's injuries. App. pp. 409-23.

[2] Agent Boehm was qualified without objection as an expert in DNA and serology. App. p. 81.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839. (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first

determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

I. The PCR court correctly found trial counsel was not constitutionally ineffective for failing to object to the solicitor's closing argument on the basis of improper bolstering because the State is allowed to argue its version of the facts to the jury, and the solicitor did not imply he had an personal knowledge regarding the witnesses' truthfulness beyond what was presented to the jury.

Petitioner alleges the PCR court erred in finding trial counsel was not constitutionally ineffective for failing to object to the solicitor's closing argument on the basis of improper bolstering because, according to Petitioner, the Solicitor referred to the credibility of two eyewitnesses and presented his personal opinion to the jury in order to "confirm Petitioner's guilt." PWC p. 3. Specifically, Petitioner alleges trial should have objected to the Solicitor's comments in closing that there was no evidence to show the boys were lying "because they're not lying" and to the portion of the solicitor's argument wherein he told the jury, "I don't believe this was voluntary manslaughter." PWC pp. 4, 6; App. pp. 383, 393. These comments were not improper, however, when read in the context of the entire argument, because the State is entitled to comment on its version of the facts, including pointing out reasons why the jury should or should not find particular witnesses credible. The solicitor did not imply he had knowledge of the witnesses' truthfulness or credibility beyond the evidence presented at trial, and he repeatedly emphasized to the jury that they should decide which witnesses and which parts of the testimony to believe. App. pp. 397-93. Accordingly, the PCR correctly denied relief on this issue, and this Court should likewise deny certiorari.

The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from that evidence. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). Furthermore, a prosecutor cannot vouch for a witness's credibility. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). A prosecutor improperly vouches for a witness's credibility and places the government's prestige behind a witness by making explicit personal assurances of a witness's truthfulness, or by implying that information not presented to the jury supports the testimony. Id. However, "[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) (citing Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)). And "[a] solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002).

Moreover, improper comments do not require reversal if they are not prejudicial to the defendant, and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. "[I]t 'is not enough that the prosecutors' remarks were undesirable or even universally condemned.' The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637 (1974)).

While the comment regarding the boys' testimony was potentially objectionable, in the context of the entire closing argument, it is apparent the solicitor was making a legitimate argument about which witnesses were telling the truth. The solicitor spent much of his closing argument comparing how Petitioner described the incident in his videotaped statement to police, which was

played for the jury, with what other witnesses, including investigators, the forensic pathologist, and the two boys, said about what happened. App. pp. 383-86. His statement, "They don't have anything to show their lying because they're not lying," in context of the whole argument, was clearly anticipating the defense's closing argument in favor of one of the lesser-included charges. The thrust of the solicitor's argument was that Petitioner's version of events was contradicted not only by the boys' testimony, but also the forensic evidence and testimony from officers, and moreover, Petitioner's demeanor immediately thereafter belied the cold-blooded nature of the crime (i.e. murder) rather than voluntary manslaughter arising from the heat of passion. App. pp. 383-86, 388-91. The solicitor's statement, while perhaps unartfully phrased, was not a personal guarantee of truthfulness and did not refer to any evidence or testimony outside of the record. The State is entitled to argue as to which witnesses it believes were credible and truthful within those parameters, and thus, it was not improper bolstering.

As to the solicitor's argument regarding voluntary manslaughter versus murder, the judge charged the jury on various lesser-included offenses, and the State was entitled to make an argument applying the facts of the case to the law, which the solicitor did here. While in this instance the solicitor used first-person phrasing ("I don't believe that it's voluntary manslaughter. . . ."), he then immediately launched into an explanation, based on the testimony and evidence presented, of why the jury should convict the defendant of murder rather than manslaughter. App. p. 388-91.

Importantly, the solicitor did not make the type of assertions condemned in Fortune[3] and Woomer[4], relied upon by Petitioner, which reference the solicitor's knowledge and conduct

[3] 428 S.C. 545, 837 S.E.2d 37 (2019).
[4] 277 S.C. 170, 284 S.E.2d 357 (1981).

outside of the trial. In Woomer, during the sentencing phase of a capital trial, the solicitor told the jurors "the burden in this case was not all on [them]" because he "had the same thing [they] did" when he "had to make up [his] mind in regards to this and... if [he] didn't want [Woomer] tried for the electric chair, there is no way the Sheriff or anybody else can make it happen. I had to make this same decision, so I have had to go through the same identical thing that you all do." 277 S.C. at 175, 284 S.E.2d at 359. Likewise, in Fortune, the solicitor told jurors, "[if] I know the person has done something that I think the facts show they're guilty of, then I can't [dismiss the case]. I have to go forward with it. And as I said my job is to show the truth. On the other hand, the defense attorneys' jobs are to manipulate the truth. Their job is to shroud the truth. Their job is [to] confuse jurors. Their job is to do whatever they have to -- without regard for the truth -- to get a not guilty verdict." 428 S.C. at 51, 837 S.E.2d at 40.

In Petitioner's case, in contrast, the solicitor only argued his point of view, as a representative of the State, as connected to the facts and evidence actually presented at trial, which was particularly relevant in this context given the trial judge charged murder, voluntary manslaughter, and involuntary manslaughter. None of the statements at issue here involve the kind of predetermination of guilt which was the key problematic issue in the cases cited by Petitioner.

Because the PCR court correctly found the solicitor's comments were part of a permissible argument regarding credibility and the State's version of the facts, this Court should deny certiorari.

II. The PCR court correctly found trial counsel was not constitutionally ineffective for failing to present a defense of self-defense at trial because trial counsel determined Petitioner's version of events did not constitute self-defense and instead argued the defense of accident, and because the trial court, *sua sponte*, charged self-defense so Petitioner received the benefit of a self-defense instruction anyway.

Petitioner argues trial counsel was constitutionally ineffective for failing to develop a defense of self-defense. As support for this argument, Petitioner points to the fact that the trial judge included a self-defense charge in his instructions even without being asked by the defense. PWC p. 10; App pp. 367-68. However, trial counsel credibility testified he did not believe Petitioner had a viable self-defense claim, and he instead presented a defense of accident to the jury. App. pp. 510, 529. Because trial counsel had a valid strategic reason for not presenting a self-defense claim, he was not deficient. Moreover, Petitioner did not present any additional witnesses or evidence to support this claim at the hearing, so he cannot meet his burden as to prejudice, as he already received the benefit of the planned defense of accident, as well as self-defense.

A self-defense charge is not required unless it is supported by the evidence. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and

(4) the defendant had no other probable means of avoiding the danger. State v. Slater, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007).

In this case, Petitioner's version of events has remained consistent since the time of the crime. According to Petitioner's testimony at the evidentiary hearing, he was swinging or flailing the knife around and stabbed or cut the victims in the process. App. pp. 498, 500. Trial counsel testified this was the story Petitioner told him when they met to discuss the case, and it was the same version he gave the Mullins police officers in his statement. App. p. 532. Trial counsel testified he argued the defense of accident, rather than self-defense because in his opinion, the facts did not support a self-defense case, particularly because Petitioner never told trial counsel he was attacked, that anyone else present in the home had a weapon, that he was unable to leave the room, or that he feared for his life or his safety.[5] App. pp. 510, 529, 532-33.

Nothing Petitioner testified to at the evidentiary hearing added support for self-defense that trial counsel neglected or failed to discover at the time of trial; trial counsel credibly testified he considered the possibility of raising self-defense and, based on his analysis of the law and facts, decided not to do so. App. pp. 532-33. These types of "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable" in post-conviction relief. Strickland, 466 U.S. 690. In any event, the trial judge chose to give the self-defense charge to the jury, along with accident, so Petitioner still received the benefit of the charge, and he cannot prove he suffered any prejudice. App. pp. 367-68. Therefore, the PCR court correctly found trial counsel was not constitutionally ineffective and denied relief.

[5] Additionally, in the statement Petitioner gave to law enforcement shortly after the stabbing, which was introduced at trial, Petitioner admitted he did not have permission to be in the apartment and that he was the initial aggressor in the argument between himself and the victim. App. pp. 373, 376, 379.

CONCLUSION

For the reasons stated above, this Court should deny certiorari and affirm the PCR court's denial of post-conviction relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 22, 2021

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SC Court of Appeals

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Court of Common Pleas

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Edward W. Stackhouse, Petitioner,

v.

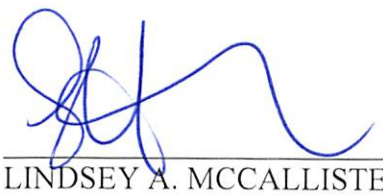
State of South Carolina, Respondent.

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 Return to Petition for Writ of Certiorari Pursuant has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Wanda H. Carter, Esquire
wcarter@sccid.sc.gov

This 22nd day of October, 2021.



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October 22, 2021

The Honorable Jenny Abbott Kitching
Clerk of Court — SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(By electronic filing only)

RE: Edward W. Stackhouse v. State of South Carolina
Appellate Case No. 2018-002169

Dear Ms. Kitchings:

Enclosed for filing please find the State's Return to Petition for Writ of Certiorari in the above-captioned case. Counsel for Petitioner is also being served with a copy of the same. Please let me know if you need anything additional at this time.

Sincerely,

Lindsey A. McCallister
Assistant Deputy Attorney General
SC Bar No. 79054

LAM/em
Enclosures

cc: Wanda H. Carter, Esquire (by email only)
Victim Advocacy Division