

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jun 23 2022

SC Court of Appeals

Roger A. Williams, # 303509, Petitioner

v.

The State, Respondent

Appellate Case № 2019-000119

Appeal From Berkeley County

Denial of Petition for Writ of Certiorari

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Roger A. Williams hereby requests that this Court re-hear this matter based upon the following:

Questions I and II

In South Carolina, no greater damage can be given to any defendant than to call him a racist and say he does not believe in Jesus Christ. This court in denying the Petition for Writ of Certiorari has sanctioned such conduct in the trial of Roger A. Williams. The facts of this case as to the admitted acts of Mr. Williams are horrible. This fact should not be considered by this court in deciding if Mr. Williams received effective assistance of counsel on the charges of homicide by child abuse and unlawful conduct towards a child. Mr. Williams contends he was not guilty of committing these two crimes.

No reasonable jurist could believe the statement as to Mr. Williams being a racist and not believing in Jesus was not prejudicial to Mr. Williams. Nor could any reasonable jurist conclude trial counsel did not err in failing to object to the two statements. As the Seventh Circuit said, “Racial prejudice can violently affect a juror's impartiality and must be removed from the courtroom proceeding to the fullest extent possible.” *U. S. ex rel. Haynes v. McKendrick*, 481 F.2d 152, 157 (2d Cir. 1973).

The only issue left is whether or not the improper statements against Mr. Williams are grounds for a new trial. In making this determination, the only basis any court can use not to find the clear errors of trial counsel were not prejudicial is to determine the evidence of guilt was overwhelming. In *Smalls v. State*, 422 S.C. 174, 194, 810 S.E.2d 836, 846 (2018) the court said as to overwhelming evidence, “As we have explained, the strength of the evidence must be considered along with the specific impact of counsel’s errors. When potentially strong evidence such as the fingerprint and Green’s identification is tainted by a significant error of counsel, it should not be considered as part of ‘overwhelming evidence’ that precludes a finding of prejudice.” In this case, the sole witness against Mr. Williams as to the charge of homicide by child abuse and unlawful conduct toward a child is Grace Troutman, who was also charged with homicide by child abuse. Mr. Williams does not contest the charge of desecration of human remains. No physical evidence in this case as to the charges of homicide by child abuse or unlawful conduct toward a child links Mr. Williams to the crime. Simply put, the evidence against Mr. Williams as to homicide by child abuse or unlawful conduct toward a child is not overwhelming.

Question III

As to the issue of failing to ask for a directed verdict on the failure to render aid, this court should grant the Petition for Writ of Certiorari and resolve the question unanswered in South Carolina as to whether a verdict of guilty should be permitted to stand when one of the theories of the state is not proven. Under the *Jackson v. Virginia*, 443 U.S. 307 (1979) the evidence is not sufficient to sustain a conviction for failing to render medical aid. The testimony at the trial was that the minor child was deceased when Mr. Williams left his place of employment. While there may be sufficient evidence as to whether Mr. Williams previously injured the minor child, that testimony depended upon the credibility of Ms. Troutman. The State argued multiple theories as to how the crime was committed.

Question IV

As to the indictment being vague, the court should have granted the Petition for Writ of Certiorari on this issue as the vague indictment clearly prejudiced Mr. Williams in his defense. The theory of the prosecution is not clearly stated in the indictment. As noted in the Petition, the state argued several theories as to how Mr. Williams is guilty but unfortunately for Mr. Williams and his trial counsel, none of them are clearly stated in the indictment. Indictments should be a matter of great importance as to both the State and the defendant. Guidance from the appellate courts is needed as to the sufficiency of indictments.

Question V

In re-considering the denial of the Petition for Writ of Certiorari, this Court should review the video tape of the interview with Grace Troutman. A review of the video will show that at trial Ms. Troutman did not accurately show how she struck the minor child on the day he died. This video actually helps exonerate Roger A. Williams of the homicide by child abuse charge

and unlawful conduct toward a child.

Trial counsel was ineffective in failing to preserve the issue of the trial judge refusing to permit the jury to view the video. This failure to preserve this issue for appeal was prejudicial to Mr. Williams. Under the standard of review in *Smalls* discussed above, no reasonable jurist could conclude that Mr. Williams was not prejudiced by the failure to preserve this issue for appeal. The video contradicts the testimony of Ms. Troutman.

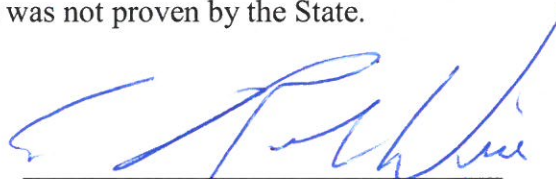
Question VI

Whether Roger A. Willimas had ever abused Grace Troutman was not relevant to the issue of whether he committed homicide by child abuse or unlawful conduct toward a child as to his son. The only purpose the evidence served is to prejudice the jury against Mr. Williams. The failure to object to this testimony was ineffective assistance of counsel. The failure to object was prejudicial as the testimony as to the alleged abuse permitted the jury to convict Mr. Williams on an impermissible basis. “Unfair prejudice from the introduction of evidence occurs when it has an undue tendency to induce a decision on an improper basis.” *State v. Bright*, 323 S.C. 221, 226, 473 S.E.2d 851, 854 (Ct. App. 1996) This court should re-consider this matter and grant the Petition for Writ of Certiorari on this issue.

CONCLUSION

For the foregoing reasons, this Court should reconsider the denial of Petition for Writ of Certiorari and grant the Petition on the issues stated above, reverse the conviction of Roger A. Williams and remand the matter for a new trial on all issues, except the allegation that he failed to render aid on the day the child died as that issue was not proven by the State.

June 23, 2022



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
S.C. Bar № 6188
rauchwise@gmail.com
(864) 229-5010

Attorney for Polly Hindman

RECEIVED

Jun 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CERTIORARI - PCR
Appeal from Berkeley County
Robert M. Young, Sr., Circuit Court Judge

Appellate Case No. 2019-000119

Roger A. Williams Petitioner,

vs

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for Attorney for the
Petitioner in the above entitled case. That on June 23, 2022, I did send via US Mail and e-mail, a
copy of the Petition for Rehearing to Megan Harrigan Jameson, S.C. Attorney General's Office,
PO Box 11549, Columbia, SC 29211 and email: mjameson@scag.gov.

June 23, 2022


Sandy Traynham
Secretary

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 006188

Attorney for Petitioner

RECEIVED

Jun 23 2022

SC Court of Appeals

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010

June 23, 2022

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

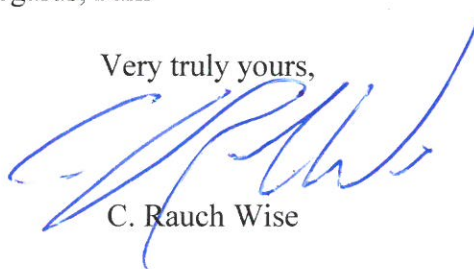
Re: Roger Williams vs. The State, Appellate Case No. 2019-000119

Dear Ms. Kitchings:

I am enclosing herewith for filing the Petition for Rehearing together with the Certificate of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt
Enclosure

cc Megan Harrigan Jameson