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Dec 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State, Respondent,

v.

Tremaine O'Keefe Pride, Appellant,

Appellate Case № 2021-000486

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Appeal from Greenwood County  
Donald B. Hocker, Circuit Court Judge

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Unpublished Opinion № 2024-UP-389  
Submitted September 1, 2024 - Filed November 27, 2024

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Petition for Rehearing

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Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Tremaine O'Keefe Pride respectfully requests that this Court rehear this matter to correct the following errors and omissions:

1. This Court erred in holding, “[A]lthough his bond form cited a different statutory offense than his indictment because he had proper notice that he would be tried in his absence for trafficking crack cocaine.” *State v. Price*, Op. № 2024-UP-389 (S.C. Ct. App. filed November 27, 2024) at 2. The error being that Mr. Pride was entitled to relay upon the statute stated in his bond notice to provide him knowledge as to what charge upon which he would be tried in his absence. The Court further erred in saying the State called, “trafficking crack third offence,

charge 28 to 100 grams' at his bond hearing." *Id.* at 2. The transcript at the bond hearing was not part of the Record on Appeal. The notation referred to by the court is a reference that appeared on the bond papers. Nothing in the record suggests that this notation was called to the attention of Mr. Pride and therefore proper notice was not provided to him.

2. This Court erred in holding the failure of the trial judge to exclude the witness who should have been sequestered to be harmless. As noted in the opening brief, "The purpose of a sequestration order is to prevent the witnesses from hearing the testimony of other witnesses and colluding with each other." *State v. Williamson*, 74 N.C. App. 114, 117, 327 S.E.2d 319, 321 (1985). Neither this court nor the trial judge is in any positions to determine if the witness would have testified the same as his testimony at trial had he not heard the testimony of the other witnesses. The purpose of sequestration is to prevent a witness from tailoring his testimony.

3. This Court further erred in holding that Mr. Pride was not prejudiced because, "[T]he State established the chain of custody of the drugs as far as practicable without his testimony and his testimony had no effect on the result of the trial." *Id.* at 3. The problem with this analysis is that neither this court nor the trial court knows what the testimony of the witness would have been had he not heard the testimony of the other officers. "The primary purpose of a sequestration order is to ensure that the defendant receives a fair trial by preventing witnesses from shaping their testimony to corroborate falsely the testimony of others." *State v. Lowe*, 61 Conn. App. 291, 297, 763 A.2d 680, 684 (2001). This Court should not hold Mr. Pride received a fair trial as a matter of law when a witness violated the sequestration rule. In addition, having the opportunity to cross-examine a witness who violated the sequestration does not remedy the problem caused by a witness violating the order.

4. This Court erred in failing to hold that this case should have been controlled by *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), *aff'd in part, vacated in part, rev'd in part*, 431 S.C. 394, 848 S.E.2d 779 (2020) In the case, this Court affirmed a ruling where a defense witness was excluded for a violation of the sequestration rule. In so ruling this court said, “[T]he trial court found defense counsel, as an officer of the court, was responsible for enforcing the order involving its witnesses.” *Id.* at 409, 818 S.E.2d at 477. By not reversing the case, this Court has said that a higher standard is applied to the defense side than the prosecution side. The assistant solicitor is as much an officer of the court as defense counsel. By the ruling in this case, the Court is not placing any sanction upon the prosecutor for failing to enforce the sequestration rule. Would this court have reversed the conviction in *Washington* had defense counsel argued the state would have the opportunity to cross-examine the witness or that the witness was not necessary to the defense case? The State elected to put the witness on the stand because they decided they needed the witness to completely explain the chain of custody to the court and the jury. The State did believe the testimony was necessary to complete the chain of custody. This Court should not now second-guess the State.

5. This Court erred in holding that the trial court was not required to charge the “hesitate to act” definition of reasonable doubt. The opinion in this case fails to recognize that trial counsel is the person in the best position to determine the closing argument they elect to make that gives their client the best chance for a successful outcome. Here trial counsel wanted a particular definition of reasonable doubt, which has been recognized by the court, to enhance his closing argument. The trial judge denied this simple request. The trial judge specifically declined the request by defense counsel to charge “hesitate to act.” *Rec. on App.* at 167, ll 19-21.

This Court has acknowledged that the request of defense counsel was a correct statement of the law. When defense counsel requests a correct statement of the law to give his client the best chance of a successful outcome, this court should require the trial judge to give the requested charge. The law should be that the trial judge is required to give a legally correct charge that gives defense counsel the best opportunity for a successful outcome. Due process demands no less.

### CONCLUSION

For the foregoing reasons this Court should rehear this matter and issue an order reversing the conviction of Tremaine O'Keefe Pride.

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CERTIFICATE OF SERVICE

I hereby Certify that I, Sandy Traynham, am the Secretary for C. Rauch Wise, attorney for the Appellant in the above entitled case. That on December 11, 2024, I did send via email the Petition for Rehearing to Mark Farthing at [mfarthing@scag.gov](mailto:mfarthing@scag.gov), Alan Wilson at [awilson@scag.gov](mailto:awilson@scag.gov), and David Stumbo at [dstumbo@greenwoodsc.gov](mailto:dstumbo@greenwoodsc.gov)

December 11, 2024

*/s/ Sandy Traynham*  
Sandy Traynham  
Secretary

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