

STATE OF SOUTH CAROLINA
In the Supreme Court

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CERTIORARI TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS **S.C. SUPREME COURT**

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001303

The State, Petitioner,

vs

Nathaniel Charles Teamer, Respondent.

PETITION FOR WRIT OF CERTIORARI

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Statement of Issues Presented

Question I: Did the Post Conviction Relief Judge err in failing to find that the search of the automobile that resulted in the recovery of a cell phone was the result of an inventory search when the state failed to produce the procedure of inventory searches and no inventory was ever taken during the inventory search?

Question II: Did the Post Conviction Relief Judge err in finding that applicant was not prejudiced when trial counsel failed to object to the introduction of the marijuana found in the automobile driven by the applicant when the marijuana had no probative value for the charges against the applicant?

Question III: Did the post conviction relief judge err in failing to find that trial counsel was ineffective because he failed to call witnesses who could have established that the circumstances under which fellow inmates had access to the cell of another inmate made the testimony of Kevin McKinney less likely to have occurred?

Statement of the Case

Procedural History

Nathaniel Teamer was convicted of murder and assault and battery with intent to kill by a jury in a trial conducted from January 14-16, 2008. His appeal was denied and he filed a timely post conviction relief petition on August 2, 2010. Rec. on App. at 1548. After a hearing before the Honorable Brooks P. Goldsmith on October 29, 2012. Judge Goldsmith by order dated February 8, 2013 granted the applicant relief on several of the grounds submitted to the court. He denied relief on several other grounds.

Factual History

The state indicted Nathaniel Teamer for the murder of James Hunter and the assault with intent to kill of David Proctor. The murder occurred when Mr. Proctor, as the driver, and Mr. Hunter, as a passenger, picked up the shooter at a residence for the purpose of purchasing drugs. After driving a short distance, the person picked up directed them to go down certain roads until he shot both Mr. Proctor and Mr. Hunter. The state attempted to show a motive of the murder of James Hunter through the testimony of Kevin McKinney. Mr. McKinney testified that Mr. Teamer confessed committing the murder while they were in the Spartanburg detention center together. He stated Mr. Hunter was killed because Mr. Hunter was a witness to a shooting in January of 2006 that, according to Mr. McKinney, Mr. Teamer had committed. App. at 237, ll 6-25 to 239, ll 1-9.

At the trial, the testimony established that Mr. Hunter had never identified Mr. Teamer as the shooter but had instead identified Mr. McKinney as the shooter. App. at 278, ll 6-25 to 279, ll 1-12; App. at 1037. Mr. McKinney testified that he left town after he learned that

Mr. Hunter had made an inquiry as to his real name. App. at 245, ll 4-21. Until Mr. McKinney gave a statement, Mr. Teamer had not been developed as a suspect.

At the trial, Mr. Proctor was not able to identify the shooter and therefore never identified Mr. Teamer as the shooter.¹ Mr. Proctor did identify the residence of Mrs. Daisy E. Feaster as being the location where he picked up the shooter. He did, however, initially give some conflicting statements as to the location of the house. He gave a statement as the location being off Wofford Street, App. at 152, ll 11-24, and on Breeze Street. App. at 1047. Aside from the testimony of Mr. McKinney, the only evidence that connected Mr. Teamer to the shooting was a cigarette butt found in the car that contained Mr. Teamer's DNA and a cell phone found in the automobile. The cigarette butt also contained a trace amount of the DNA of another person but was not of sufficient amount to identify that person.² App. at 1052

The defense was the third party guilt of Mr. McKinney. The defense established that Mr. McKinney had been identified as being involved in the previous shooting, fled from the Spartanburg area and had admitted to another person that he was responsible for the murder. App. at 405, ll 21-25 to 407, ll 1-7. The defense also had an alibi defense. One alibi witness was unable to testify because of a sudden illness. Trial counsel did not ask for a continuance when this witness became ill.

¹ If, as contended by the state, Mr. Hunter could identify Mr. Teamer as the shooter in the other incident, Mr. Hunter would be very unlikely to have picked up Mr. Teamer and permitted him to ride in the car with Mr. Hunter.

² A pair of gloves allegedly used in the shooting were also found at the scene. The inside of these gloves did not contain the DNA of Mr. Teamer but contained the DNA of James Hunter, the victim. Exhibit 78, App. at 343, ll 1-2; App. at 1050 to 1052.

Question I

Did the post conviction relief judge err in failing to find that the search of the automobile that resulted in the recovery of a cell phone was the result of an inventory search when the state failed to produce the procedure of inventory searches and no inventory was ever taken during the inventory search?

In a pre-trial motion defense counsel moved to exclude from evidence the cell phone taken from the automobile used by Nathaniel Teamer as being part of an illegal search. The cell phone was seized during a search of the automobile that was conducted without a warrant. As such, the burden was upon the state to justify the search.³

Officer Edgar Victor Guthro testified that after the automobile had been in the possession of the Spartanburg Public Safety Department since at least February 10, 2006. The automobile was searched pursuant to a search warrant on February 8, 2006 and February 10, 2006. Officer Guthro participated in the February 10th search of the automobile. App. at 950. The “inventory” search occurred without a warrant on February 22, 2006. The automobile was searched a third time with a warrant on March 2, 2006. All the searches were by the Spartanburg Public Safety Department.

When the “inventory” search occurred on February 22, 2006, no inventory was apparently prepared as no such document was introduced by the state. Strangely, for an inventory search, officer Guthro testified that when he found the cell phone pursuant to the “inventory” search, he stopped searching. App. at 214, ll 15-20.

³ The legality of the search was not addressed on appeal. Mr. Teamer raised this issue at his Post Conviction Relief hearing. App. at 776, ll 10-11. Trial counsel admitted he failed to preserve the issue for appeal. App. at 877, ll 14-25 to 878, ll 1-4.

The United States Supreme Court in *South Dakota v. Opperman*, 428 U.S. 364 (1976) recognized that an inventory search is proper when a search is conducted pursuant to a standard inventory search procedure. The Court said “The inventory was conducted only after the car had been impounded for multiple parking violations. The owner, having left his car illegally parked for an extended period, and thus subject to impoundment, was not present to make other arrangements for the safekeeping of his belongings. The inventory itself was prompted by the presence in plain view of a number of valuables inside the car. As in *Cady*, there is no suggestion whatever that this standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive.” *Id.* at 375-376.

But the use of the word “inventory” to describe a search does not give the search validity. If the law were to so hold, then the search of any automobile could be justified by simply calling the search an “inventory” search. No case has so held. Where the officer was obviously not conducting an “inventory” search. First the search was conducted several weeks after the automobile had been placed in the custody of the Spartanburg Department of Public Safety. No inventory was ever produced. The state never attempted to produce any standard inventory procedures. When the cell phone was found, no further inventory was taken. Under the facts, the purpose of an inventory search, to protect the agency from false claims and to protect the property of the defendant, is not served. How does searching an automobile weeks after it is seized protect an agency from false claim? How is a defendant’s property protected by stopping an “inventory” search with the finding of one item? No facts presented before the post conviction relief judge supported a finding that this search was an inventory search.

When a ruling of the post conviction relief judge is devoid of facts to support his

conclusions, the ruling is in error. Clearly the defendant was prejudiced by this ruling as the cell phone found in his automobile was the number called by Mr. Proctor when he was talking to the person he picked up.

Question II

Did the Post Conviction Relief Judge err in finding that applicant was not prejudiced when trial counsel failed to object to the introduction of the marijuana found in the automobile driven by the applicant when the marijuana had no probative value for the charges against the applicant?

The Post Conviction Relief judge found that counsel was ineffective in failing to object to the introduction of the marijuana. He found, however, the applicant was not prejudiced by the introduction of the evidence of this other crime. The simple answer is that the state obviously thought the introduction of this evidence would advance their case or they would not have run the risk of introducing the evidence.

In a pre-trial motion defense counsel specifically asked about any possible evidence that would come under Rule 404b of the South Carolina Rules of Evidence. App. at 64, ll 8-12. The State assured defense counsel that no 404b evidence would be introduced. Unfortunately this proved not to be correct. App. at 224, 7-11. In ruling against the applicant the post conviction judge did not explain why he believed the evidence of the marijuana was not prejudicial. In no other issue upon which he granted relief did he determine that the evidence was so overwhelming that no prejudice resulted from the error of trial counsel. The jury could easily have determined that the crime occurred while the applicant was high while smoking marijuana. The applicant was prejudiced by this fact.

Question III

Did the post conviction relief judge err in failing to find that trial counsel was ineffective because he failed to call witnesses who could have established that the circumstances under which fellow inmates had access to the cell of another inmate made the testimony of Kevin McKinney less likely to have occurred?

Rule 401 of the South Carolina Rules of Evidence states that “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would have been without the evidence.” Under that definition, the testimony of Teresa Speller was certainly relevant to prove that the testimony of Kevin McKinney was less probable. Her testimony, while not conclusive, certainly shows that for Mr. Teamer to enter the cell of Mr. McKinney would be in violation of the rules and would be unlikely due to the manner in which inmates are released to make phone calls. Mrs. Speller testified that Mr. Teamer and Mr. McKinney would not have been released at the same time and therefore would not have had any contact with each other.

The testimony of James Humphries also made the testimony of Mr. McKinney less probable. Mr. Humphries testified he was the cell mate of Mr. Teamer and Mr. McKinney never came to their cell nor was it likely that Mr. Teamer would have been unable to go to the cell of Mr. McKinney.

The post conviction relief judge found that trial counsel made a strategic decision not to call Mr. Humphries or Mrs. Speller. The Post Conviction Relief Judge, however, failed to state what the strategic decision was. Trial counsel testified he did not use Mrs. Speller because she would have been required to admit that security was not as strong as it should have been.

But that does not make her testimony inadmissible and while it may have made her testimony less probative, her testimony would have made Mr. McKinney's testimony less likely. Trial counsel feared Mrs. Speller's testimony would open the door, but failed to state what exactly he feared from Mrs. Speller that would make her testimony more harmful than helpful. Trial counsel never explained why the testimony of Mrs. Speller or Mr. Humphries had the potential for harming his case. App. at 908, ll 4-25 to 910, ll 1-24. When the record is devoid of a reason for the failure to call a witness, the conclusion of the Post Conviction Relief Judge that the decision was a strategic decision is speculative at best.

Question IV

Should this Court affirmed the decision of the Post Conviction Relief Judge under the cumulative error theory?

Whether cumulative error should entitle an applicant to relief“ is an unsettled question in South Carolina.” *Simpson v. Moore*, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006). Mr. Teamer contends that the cumulative errors in this case should affirm the decision of the post conviction relief judge even if this court finds each assignment of error individually is not sufficient to affirm the decision below.

In *Kyles v. Whitley*, 514 U.S 419 (1995) the United States Supreme Court held in evaluating a *Brady* violation, “the prejudice must be considered collectively, not item by item.” *Id.* at 436. *See, also, Williams v. Taylor*, 529 U.S. 362, 398-399 (2000)(“In our judgment, the state trial judge was correct both in his recognition of the established legal standard for determining counsel's effectiveness, and in his conclusion that the entire post conviction record, *viewed as a whole* and cumulative of mitigation evidence presented originally, raised ‘a

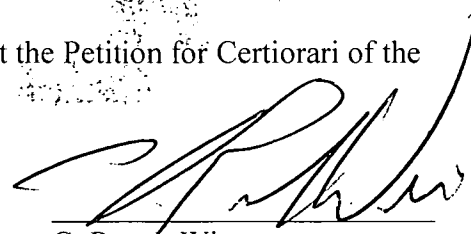
reasonable probability that the result of the sentencing proceeding would have been different' if competent counsel had presented and explained the significance of all the available evidence.)(emphasis added); *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citations omitted) ("cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial"); and *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) (cumulative effect of prosecutor's closing argument when coupled with improper exclusion of evidence warranted reversal).

Taken as a whole, the errors by trial counsel, both those found by the post conviction relief judge and those raised in this appeal in the murder and assault and battery with intent to kill charge, demonstrate that Mr. Teamer was not adequately represented. While the state may argue that any one of the errors may not have changed the verdict, one cannot rationally argue that the errors taken as a whole, would not have had an impact on the jury and led to a different result..

Conclusion

For the foregoing reasons this Court should grant the Petition for Certiorari of the applicant and overturn his conviction.

June 23, 2014



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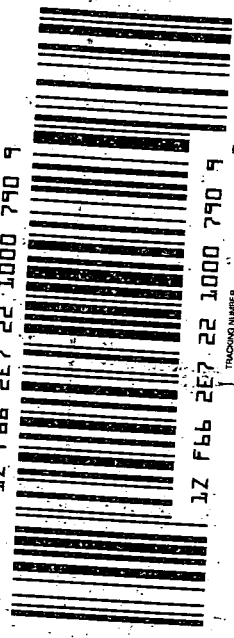
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