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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001303

The State, ... Petitioner,

vs

Nathaniel Charles Teamer, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Question I

Did the Post Conviction Relief judge err in granting post conviction relief based upon counsel's failure to move for a continuance when Nathaniel Teamer's alibi witness became ill during the trial?

During the first few days of the trial, Daisy Elaine Feaster was present for the trial. During the trial, she became ill and was confined to her house. App. at 645, ll 21-24. Mrs. Feaster had testified at the previous burglary trial. She testified that Mr. Teamer called her about 8 pm while she was taking a bath. App. at 1473, ll 18-23. When she got out of the tub, she saw Mr. Teamer in her house. App. at 1473, ll 3-4. She then testified that she left for the Wal-Mart to purchase a television about 9 pm. App. at 1473, ll 24-25 to 1474, ll 1-4. This testimony would provide an alibi for Mr. Teamer.

The responding officer arrived at the scene at 8:49. App. at 99, ll 10-11. The call from dispatch occurred at 8:46. App. at 102, ll 19-22. Mr. David Proctor, who survived the shooting, ran from the truck and knocked on several doors before someone let him call 911. App. at 111, ll 4-11. After he picked up the shooter, he took about two minutes to get to highway 29, which is near where the shooting occurred. App. at 109, ll 13-14. Assuming Mr. Proctor spent only one minute fleeing the scene and finding someone who would call 911, the testimony would establish that the shooter was picked up about 8:42 pm. When Mrs. Feaster testified at the burglary trial that she saw Mr. Teamer at her house when she left for Wal-Mart, she has provided Mr. Teamer with an alibi as he could not have been the person Mr. Proctor picked up. She also confirmed the testimony of Osia Feaster, her daughter. App. at 396, ll 24-25 to 403, ll 1-16.

The cases relied upon by the Petitioner do not support their position. In *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) this court reversed the granting of a post conviction relief petition on the ground that a witness who placed the defendant in Florida twelve hours before the armed robbery occurred was not an alibi witness. Testimony at the Post Conviction Relief hearing established that

Williamsburg County was only six and a half hours from the location in Florida. Clearly that testimony did not establish an alibi. The jury in this case should have been permitted to determine if the testimony of Mrs. Feaster established Mr. Teamer with an alibi.

Under the any evidence standard by which this Court must review the evidence, the post conviction relief judge had probative evidence by which he made his determination. Based upon the testimony of Mrs. Feaster, the record establishes that competent evidence exists which supports the factual finding of the post conviction relief judge as to the failure to call an alibi witness. "This Court will uphold factual findings of the Post Conviction Relief Judge if there is any evidence of probative value to support them." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The post conviction relief judge viewed the witness and found that she would have supported the applicant's alibi.

The testimony of Mrs. Feaster is also important to Mr. Teamer's defense. The only other alibi witness was his girlfriend. Mrs. Feaster's daughter. By not calling Mrs. Feaster the jury was led to believe that no one else could confirm the testimony of Osia Feaster.

The Petitioner further argues that the burden of proof is upon Mr. Teamer to establish prejudice from the failure to call Mrs. Feaster. The petitioner says Mr. Teamer established no prejudice because the trial judge may not have granted a continuance to permit Mrs. Feaster to testify. Unless this Court is to rule as a matter of law that a brief continuance should never be granted during a trial to permit an important defense witness to testify, prejudice has been proven. The post conviction relief judge found prejudice and the error is not an error of law. The record establishes prejudice.

Question II

Did the Post Conviction Relief Judge err in granting relief when trial counsel did not request a jury charge on third party guilt which was the theory of the defense of the applicant?

The United States Supreme Court has held "As a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a

reasonable jury to find in his favor." *Mathews v. United States*, 485 U.S. 58, 63 (1988). This Court has also recognized the need for a specific jury charge explaining the exact theory of defense for the defendant. *See, State v. Day*, 341 S.C. 410, 535 S.E.2d 431(2000); *State v. Hewitt,* 205 S.C. 207, 31 s.E.2d 257 (1944).

The third party guilt defense was brought to the forefront when the United States Supreme Court decided *Holmes v. South Carolina,* 547 U.S. 319 (2006). Since that decision any reasonably competent criminal defense counsel should have been aware of the importance of third party guilt and been prepared to provide the court with a proper charge.

The requested charge should have been:

There has been evidence that a third party, not the defendant, committed the crimes with which the defendant is charged. This evidence is not intended to prove the guilt of the third party, but is part of the total evidence for you to consider. The burden remains on the state to prove each and every element of the offense beyond a reasonable doubt.

It is up to you, and to you alone, to determine whether any of this evidence, if believed, tends to directly connect a third party to the crimes with which the defendant is charged. If after a full and fair consideration and comparison of all the evidence, you have left in your minds a reasonable doubt indicating that the alleged third party, Kevin McKinney, may be responsible for the crimes the defendant is charged with committing, then it would be your duty to render a verdict of not guilty as to Nathaniel Teamer.

In *State v. Arroya*, 284 Conn. 597, 935 A.2d 975 (2007) the Connecticut Supreme Court approved such a charge where a defendant has established evidence of third party guilt. If a jury hears evidence of third party guilt they may well believe that they must find the third party guilty beyond a reasonable doubt in order to acquit the defendant. This is simply not correct. Without a proper instruction to the jury as to how to use the evidence, the evidence could be improperly analyzed by the

jury. Simply put, the defendant would have lost his right to present a defense.

Question III

Did the Post Conviction Relief judge err in granting relief to the applicant when trial counsel failed to object to the charge that "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair trial" when the charge was an improper statement of the law?

State v. Daniel, 401 S.C. 251, 737 S.E.2d 473 (2012) did not reverse prior precedent nor did it state a new principle of law not previously established. The case simply stated what had been known for a long time. Since *Sandstrom v. Montana*, 442 U.S. 510 (1979) criminal defense lawyers have known they should look carefully at charges to the jury concerning burden shifting charges. This is exactly what the charge in this case does.

The trial judge in this case told the jury their "sole objective . . . is simply to reach the truth in the matter." App. at 454, ll 19-22. What the trial court did not tell the jury, nor does any other charge so inform the jury, is that if they are unable to determine the truth, then they should acquit the defendant as the state has failed in it's burden of proof. A "tie" was not given as an option for the jury. The jury was told to find the facts that are the truth.

As said by one court "The jury's role was to determine whether the State had proven its case against this defendant beyond a reasonable doubt." *State v. Buscham*, 360 N.J. Super. 346, 365, 823 A.2d 71, 82 (App. Div. 2003). The jury's role is not to "simply reach the truth." In this case the Post Conviction Relief Judge had adequate facts to conclude that the failure of trial counsel to object to the charge was ineffective assistance to counsel.

Even considering the charge as a whole, what in the charge clarifies the charge to the extent there is no prejudice? The comment was made at the beginning of the jury instructions and not when the credibility of witnesses was being discussed. The comment applied to the case as a whole and

not just the testimony of witnesses. Even when the charge is repeated in the context of witness credibility, the prejudice is enhanced. App. at 462, ll 9-12. The charge as given, forced the jury to draw the line between finding that some witnesses were lying or telling the truth. They were again told they must find "the truth." They were not left with the option of finding that they did not know what the truth was and therefore the defendant should have been found not guilty. As such, the burden on the state was lessened in violation of the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the 14th Amendment to the Constitution of the United States of America.

Question IV

Should this Court affirm 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.

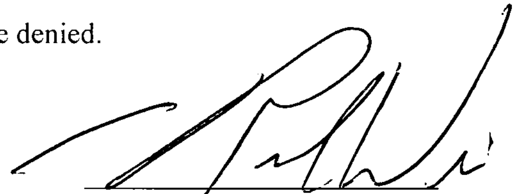
In *Kyles v. Whitley*, 514 U.S 419 (1995) the United States Supreme Court held in evaluating a *Brady* violation, "the prejudice must be considered collectively, not item by item." *Id.* at 436. *See, also, Williams v. Taylor*, 529 U.S. 362, 398-399 (2000)("In our judgment, the state trial judge was 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 Mr. Teamer's appeal, demonstrate that Mr. Teamer was not adequately represented in his defense of the murder and assault and battery with intent to kill charge. While the state may argue that any one of the errors by trial counsel may not have changed the verdict, one cannot rationally argue that the errors by counsel taken as a whole, would not have had an impact on the jury.

CONCLUSION

As the testimony before the post conviction relief judge supports the findings of the post conviction relief judge the petition for Writ of Certiorari should be denied.



June 23, 2014

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JUN 24 2014

S.C. SUPREME COURT

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Nathaniel Teamer vs. State of South Carolina, Appellate Case No. 2013-001303

Dear Mr. Shearouse:

I am enclosing herewith for filing the original Petition for Writ of Certiorari and the original Return of Petition for Writ of Certiorari together with the original Affidavit of Service in the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Suzanne H. White, Asst Depty Attorney General

STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 24 2014
S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Brooks P. Goldsmith, Circuit Court Judge

Circuit Case Number: 2010-CP-42-4181
Appellate Case No. 2013-001303

Nathaniel Teamer, ... Respondent-Petitioner,

vs.

State of South Carolina .... Petitioner-Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on June 23, 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petition for Writ of Certiorari and Return of Petition for Writ of Certiorari in the above case addressed to Suzanne H. White, Asst Deputy Attorney General Attorney General Office, PO Box 11549, Columbia, SC .

SWORN to and Subscribed

before me this 23 day

of June, 2014.

Mary Jane Harter (L.S.)
11/30/22

Sandy Traynham