

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

RECEIVED

JUL 14 2014

S.C. Supreme Court

State of South Carolina,Petitioner-Respondent,

v.

Nathaniel Charles Teamer,Respondent-Petitioner.

**REPLY TO RETURN
TO PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

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ARGUMENT IN REPLY

I. The PCR court erred in granting post-conviction relief based upon Counsel's failure to move for a continuance when Respondent's alleged alibi witness was not credible and Respondent failed to demonstrate prejudice.

Petitioner respectfully submits that the PCR court incorrectly found that Counsel was ineffective for failing to move for a continuance during trial because one of Respondent's alibi witnesses became ill during the trial and was unable to testify.

First, Petitioner notes that the PCR court specifically did not make a finding that Daisy Elaine Feaster, the mother of the Respondent's girlfriend at the time of the charges, was credible with her testimony at the PCR hearing. Ms. Feaster testified at Respondent's burglary trial in September 2007. However, Feaster became ill after a couple of days of the murder trial and did not testify at that trial in January 2008. Respondent presented Ms. Feaster's testimony at the post-conviction relief hearing to support his claim that Counsel was ineffective. There is no probative evidence that the outcome of the trial would have changed had Ms. Feaster been allowed to testify. Ms. Feaster and her daughter both testified at the burglary trial and clearly, the jury did not believe their testimony regarding Respondent's whereabouts later that evening.

At the PCR hearing, Ms. Feaster denied that she ever testified on Respondent's behalf at any trial. (App. p. 656). In fact, Feaster asserted no less than twenty-two times that she did not testify at any of Respondent's trials and refused to acknowledge the transcript that said otherwise. (App. pp. 640-9). However, Feaster affirmed that she would have been willing to testify at the murder trial if Counsel had requested and obtained a continuance of the trial once she became ill. Feaster testified that she was at the trial "every day until the day [she] was supposed to testify." (App. p. 644). Feaster acknowledged that her daughter testified at the murder trial. (App. p. 644). At the PCR hearing, Feaster testified that she would have testified that the Respondent called into

her house about 8:30 or 9:00 and told Feaster that he was outside waiting on her daughter. (App. p. 646). Furthermore, Feaster testified that Respondent was at the home when Feaster returned around 12:00 that night. (App. p. 646).

Counsel also testified that he did not believe it would have helped to have Feaster testify at the murder trial based upon her inability to provide an alibi for Respondent from approximately 8:00 “something” until midnight, the time frame for which the murder occurred. (App. p. 915). On cross-examination, Feaster confirmed that **she had no idea where the Respondent was between the hours of 8:30 pm or 9:00 pm until 12:00 am because she had left the home.** (App. p. 1416).

To be successful, [Respondent’s] alibi must cover the entire time when his presence was required for accomplishment of the crime. State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (affirming that since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused’s guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all). This Court has previously found that a defense counsel’s failure to contact alleged alibi witnesses was not prejudicial, absent showing that witnesses’ testimony would have established alibi defense because an alibi that leaves it possible for the accused to be the guilty person “is no alibi at all.” Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (citing Robbins). Even if this Court gave Feaster the benefit of the doubt when reviewing her testimony based upon the fact that she completely denied testifying at the first trial and refused to accept the trial transcript of the burglary trial as accurate, her testimony does NOT meet the requirements set forth in Walker, Robbins, and Glover to establish an alibi.

Not only can Respondent not demonstrate that the judge would have granted his motion for a continuance, but he cannot establish that the outcome of his trial would have changed had the

motion been made. Accordingly, no evidence in the record supports the PCR court's finding that Respondent satisfied the prejudice prong of Strickland. Respondent failed to offer any evidence that the trial court would have continued a trial that was already several days into testimony, to obtain the testimony of a witness who was present in the courtroom for those initial days.

II. The PCR court erred in granting Respondent's application where Respondent failed to prove that Counsel's failure to object to portions of the trial court's jury instructions constituted deficient performance where the jury instructions, taken as a whole were free from error.

Respondent failed to prove under Strickland that Counsel rendered ineffective assistance when he failed to object to two phrases that the trial court made in its jury instruction: "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair and impartial trial," based upon the reasoning in State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). "It is well established that the [jury] instruction 'may not be judged in artificial isolation,' but must be considered in the context of the instructions as a whole and the trial record. Estelle v. McGuire, 502 U.S. 62, 72, 112 S. Ct. 475, 482, 116 L. Ed. 2d 385 (1991).

This Court has consistently held that jury instructions should be viewed as a whole and an isolated and possible misleading statement does not constitute reversible error if the charge as a whole was free from error. See State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000); State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994); State v. Sims, 304 S.C. 409, 422, 405 S.E.2d 377, 384 (1991); and State v. Daniels, 231 S.C. 176, 181, 97 S.E.2d 902, 905 (1957) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). This analysis was reiterated in State v. Jenkins, 2012-211588, 2014 WL 3352034, at *3 (S.C. Ct. App. May 21, 2014).

In this case, throughout the duration of the charge, the trial court utilized language related to reasonable doubt and the State's burden of proof. In a charge more than twenty pages long, the phrases Respondent-Petitioner insists Counsel should have objected to were only the fourth and eighth sentences in the charge. (App. p. 454, lines 11; 19-22). In fact, the words reasonable doubt and phrases indicating that the State had the burden of proof and the defendant had the presumption of innocence were used more than twenty times following that introduction. (App. p. 455, lines 20-22; p. 456, lines 1-7, 11-13, 17-21; p. 457; p. 458, lines 1-3, 6-10; p. 464, lines 16-17; p. 465, lines 2-5; p. 466, lines 11-14; App. p. 468, lines 7-9, 21-25; p. 470, lines 2-3, 10-13, 18-22; p. 471, lines 10-20; p. 472, lines 4-8, 13-15; p. 473, lines 5-11). As in Daniels, the trial judge in this case countered the statements regarding truth and fairness with full and adequate instructions on reasonable doubt. Daniels, 401 S.C. at 260. Thus, the jury instructions, considered in their entirety, were correctly rendered.

III. Respondent-Petitioner's argument that the decision of the PCR court should be affirmed based upon the doctrine of cumulative error should not be considered as it was never raised or ruled upon by the lower court.

Petitioner submits that this issue is not properly before the Court. The argument was never brought before the lower court and ruled upon; therefore, this argument is unpreserved for appellate review. See State v. Sheppard, 391 S.C. 415 --, 706 S.E.2d 16, 20 (2011) ("Our law is clear that an issue may not be raised for the first time on appeal."); l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellate must present both his issues and arguments to the lower court and obtain a ruling before presenting issues and arguments on appeal). Therefore, Petitioner submits that this issue was not properly preserved and should not be considered.

CONCLUSION

For all the foregoing reasons coupled with arguments articulated in the Petition for Writ of Certiorari, it is respectfully submitted that the decision of the lower court be reversed and the conviction of the trial court be affirmed.

Respectfully submitted,

ALAN WILSON
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By: 
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July 14, 2014.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

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

NATHANIEL TEAMER,

Petitioner,


v.

STATE OF SOUTH CAROLINA,

Respondent.

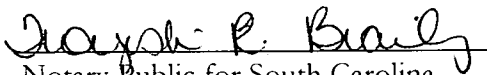
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply to the Return to the Petition for Writ of Certiorari was served upon Petitioner by depositing the same in the United States mail, postage prepaid, addressed to his attorney of record, C. Rauch Wise, Esquire, 305 Main Street, Greenwood, South Carolina 29646, on this the 14th day of July, 2014.



Suzanne H. White
Assistant Deputy Attorney General

SWORN to before me this
14th day of July, 2014.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: ~~8/22/2012~~



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July 14, 2014

Via Hand Delivery

Honorable Daniel E. Shearouse,
Clerk of the Supreme Court of South Carolina
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S.C. Supreme Court

RE: Nathaniel Teamer v. State of South Carolina
Circuit Court Case No: 2010-CP-42-4181
Appellate Case No.: 2013-001303

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Reply to the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this return today.

With highest regards,

Suzanne H. White
Assistant Deputy Attorney General

SHW/aam
Enclosures

cc: C. Rauch Wise, Esquire (w/enclosure)