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JUL 24 2014

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July 21, 2014

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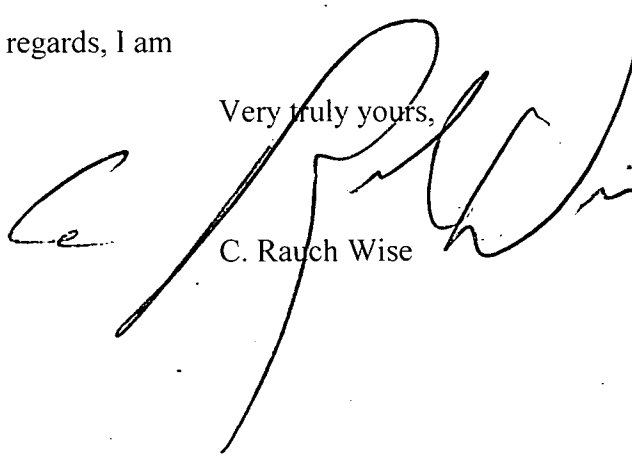
Re: Nathaniel Charles TEamer vs. The State (2013-001284)

Dear Mr. Shearouse:

Enclosed herewith is the original revised Petition for Writ of Certiorari concerning the above referenced matter, together with the original Affidavit of Service.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh

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JUL 24 2014

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. 2013-001284

Nathaniel Charles Teamer, Respondent-Petitioner,

vs

The State, Petitioner-Respondent.

PETITION FOR WRIT OF CERTIORARI

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Index

Table of Authorities:	ii
Statement of the Case:	1
Argument:	
Question I	
Did the PCR Judge err in failing to find trial counsel was ineffective when trial counsel permitted, without objection, the investigating officer to testify that the applicant caused the wreck by crossing the centerline when the determination was made by other officers and not based upon his personal observations?	3
Question II	
Did the Post Conviction Relief Judge err in finding that trial counsel was not effective when he failed to explore or investigate the alleged complaint against Donald Martin, Jr., concerning the allegation that he had an improper relationship with the daughter of Erica Gray?	5
Question III	
Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective because of his failure to properly seek admission of the cocaine and alcohol use by the driver of the car involved in the felony driving under the influence?	8
Question IV	
Should this Court reverse the decision of the Post Conviction Relief Judge on these issues under the cumulative error theory?	9
Conclusion	11

Table of Authorities

Cases:	Page
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	5
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	9
<i>People v. Parham</i> , 147 A.D.2d 944, 537 N.Y.S.2d 384 (1989)	9
<i>Simpson v. Moore</i> , 367 S.C. 587, 627 S.E.2d 701 (2006)	9
<i>State v. Blurton</i> , 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000)	10
<i>State v. Brewington</i> , 267 S.C. 97, 226 S.E.2d 249 (1976)	6
<i>State v. Johnson</i> , 334 S.C. 78, 512 S.E.2d 795 (1999)	10
<i>State v. Major</i> , 301 S.C. 181, 184, 391 S.E.2d 235	8
<i>State v. Turner</i> , 352 S.W.3d 425 (Tenn. 2011)	9
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000)	9
Statutes:	
S. C. Code § 56-5-2945	3
Court Rules:	
Rule 608, South Carolina Rules of Evidence	6

Statement of the Case

Procedural History

The State indicted Nathaniel Teamer, the Respondent-Petitioner, on the charges of burglary, armed robbery, felony driving under the influence, failure to stop for a blue light, murder and assault and battery with intent to kill. Prior to the trial, the trial judge severed the murder and assault and battery with intent to kill from the other charges.

The Respondent-Petitioner was convicted of the burglary, failure to stop for a blue light and felony driving under the influence. He was found not guilty of the armed robbery charge. These convictions were affirmed on direct appeal. On August 2, 2010 Mr. Teamer filed a timely application for Post Conviction Relief. App. at 560. A hearing was held before the Honorable Brooks. Goldsmith on October 29, 2012. By his order dated February 8, 2013 Judge Goldsmith granted the applicant relief on some issues and denied him relief on other issues.

The State filed a notice of Intent to appeal and subsequently, the applicant filed his notice of intent to appeal.

Factual History

The charges for this case arose out of an alleged burglary and armed robbery of the residence of Mary Gray and Donald Martin. Ms. Gray testified she had known Mr. Teamer for over 18 years and recognized his voice. App. at 120, ll 21-25. Mr. Martin also had known Mr. Teamer for a number of years and testified that he recognized his voice. App. at 175, ll 14-25 to 176, 1-9. Notwithstanding their claim to have known Mr. Teamer, neither person identified him to the police on the night of the incident. App. at 845 and 846. They both testified that property or money was taken from them at gun point.

Later that evening, while investigating the incident, an officer of the Spartanburg Department of Public Safety started the pursuit of the automobile Mr. Teamer was driving. The chase ultimately led into the county where the Spartanburg Sheriff's office pursued Mr. Teamer until he crashed. At the time of the crash the patrol car was equipped with a video camera, but the officer failed to record the defendant at the scene. App. at 365, ll 24-25 to 366, ll 1-7.

Question I

Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective when trial counsel permitted, without objection, the investigating officer to testify that the applicant caused the wreck by crossing the centerline when the determination was made by other officers and not based upon his personal observations?

To prove the crime of felony driving under the influence, the state is not only required to prove the defendant was driving while intoxicated, they are required to prove that the driving of the defendant violated a duty imposed by law which act was the proximate cause of the collision. S. C. Code § 56-5-2945. Thus, whether the applicant was crossing the centerline was a crucial element of the crime.

During the trial, Officer Dwayne Darity testified without any objection to the following:

Q. And through your investigation what did you discover? What was the cause of the accident?

A. Mr. Teamer was traveling northbound on Mt. Zion Road. He crossed the center line striking Mr. Young driving a 1988 Ford, I'm sorry, Dodge pickup truck.

App. at 258, ll 1-5

On cross examination, defense counsel continued to elicit hearsay statements as to the cause of the collision. After having the officer admit he did not see the accident, he asked the following questions:

Q. Nevertheless, you determined it to be caused by Mr. Teamer,

correct?

A. Yes.

Q. Okay. And you reached that determination because another officer told you about this right?

A. Based on the investigation, yes.

App. at 262, ll 22-25 to 263, ll 1-2.

Q. So all of your involvement of the accident was that you responded to it approximately 16 minutes afterwards, you looked around and then you left.

A. I don't think it's that easy to do. We gathered information on the scene, and based on that information we came to a determination that Mr. Teamer did cross the center line, and that's when we made other - -

App. at 264, ll 15-22

Officer David Michael Evett was permitted to testify on direct examination

without object to the following:

Q. And whose fault was the wreck? Who caused the wreck in this situation based on your observation?

A. Based on my observation it would be Mr. Teamer's fault. He was driving without his headlights on.

App. at 340, ll 16-20.

In denying relief on the failure of trial counsel to object to the improper testimony, the Post Conviction Relief judge found "Due to counsel's cross examination of the law enforcement officers, which addressed a number of issues raised by Applicant, this Court cannot find that trial counsel was ineffective." App. at 1395. The cross examination simply compounded the error. On cross, Officer Dwayne Darity was permitted to say "we came to a determination that Mr. Teamer did cross the center line." App. at 264, ll 20-22. Thus, not only was Officer Darity able to give his hearsay opinion, he buttressed his opinion with the hearsay

testimony that other officers also agreed with him. The testimony of officers Darity and Evett was expert opinion testimony without qualifying them as an expert as required by the rules. In addition, Officer Darity gave an opinion based in a large part upon the conclusions of other officers. This testimony would violate the Sixth Amendment right to confront witnesses as set forth in *Crawford v. Washington*, 541 U.S. 36 (2004).

The Post Conviction Relief judge was not able to give an adequate explanation as to why the inadmissible testimony was not grounds for finding trial counsel was ineffective. The Post Conviction Relief Judge agreed that trial counsel should have made the objections to the opinion and hearsay testimony of the officers. The sole reason given for not overturning the conviction on this ground was the cross-examination of the officers. None of the cross examination of the two witnesses eliminated the harm done by the inadmissible testimony. All that was established through the cross examination was that other officers participated in the decision to conclude that Mr. Teamer crossed the center line and caused the wreck. This certainly did not eliminate the prejudice from the improper testimony. The record simply does not contain any evidence that supports the Post Conviction Relief Judge's position that cross examination was so effective that any prejudice was eliminated.

Question II

Did the Post Conviction Relief Judge err in finding that trial counsel was not ineffective when he failed to explore or investigate the alleged complaint against Donald Martin, Jr. concerning the allegation that he had an improper relationship with the daughter of Erica Gray?

At the Post Conviction Relief hearing counsel introduced records showing that an

allegation of improper conduct against Donald Martin, Jr. with his niece had been reported to the police. App. at 839-840. Trial counsel admitted that the DSS incident was relevant and would show a motive by Erica Gray and Donald Martin to lie about Mr. Teamer. App. at 737, ll 20-25 to 739, ll 1-9. Mr. Teamer, at the Post Conviction Relief hearing, further explained the importance of the DSS incident. App. at 625, ll 15-25 to 628, ll 1-5. He testified concerning the custody issue, “there was a big family dispute over the custody battle with her.” App. at 625, ll 20-23. At the trial, the evidence was excluded without even a proffer of evidence by the trial counsel. App. at 184, ll 24-25 to 185, ll 1-7.

During the direct examination of Erica Gray, the solicitor brought out the incident involving Donald Martin and his niece. App. at 125, ll 14-20. All defense counsel had to do was simply state that the solicitor opened the door on the incident and the trial judge would have been required to permit him to develop the line of cross examination. Rule 608(c) of the South Carolina Rules of Evidence permits the impeachment of a witness with a motive to lie. As this Court has held “as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony” *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976). Certainly a “family feud” concerning custody of a minor child would tend to raise a question concerning the motive or bias of a witness.

In addition, the solicitor in his opening and closing remarks made reference to this incident. The solicitor used it as a motive for Mr. Teamer to rob Mr. Martin. App. at 113, ll 7-9 and 434, ll 16-18. Due to the fact that his trial counsel did not properly explain to the trial judge the basis for admitting the DSS incident, Mr. Teamer was deprived of the opportunity to explain

to the jury that the incident was a reason for the witnesses to lie about him and not a reason for him to rob them.

The Post Conviction Relief Judge summarily dismissed this issue by saying “This Court finds that Applicant has failed to show what further effort on the part of trial counsel could have been done to affect the outcome of the trial. App. at (12). Aside from the alibi, the credibility of Erica Gray and Donald Martin was key to the defense. All trial counsel had to do was explain to the trial judge the fact that the DSS incident gave both witnesses a motive to lie about the conduct of the Mr. Teamer. As the solicitor had made reference to the incident in opening and in his direct examination, trial counsel should have argued the cross examination was relevant to impeach and to explore the bias of the two witnesses. Basic fairness would require that if the state is entitled to use the incident to establish a motive by Mr. Teamer, that Mr. Teamer should have been permitted to fully cross examine the witnesses on the subject to show that the incident was a motive of the witnesses to lie against him.

The record in this case shows ample evidence that trial counsel was ineffective in failing to argue for the admissibility of the DSS incident and in failing to make an adequate record for appellate review on this issue. The ruling on this issue is at odds with the finding of the Post Conviction Relief court that trial counsel was ineffective for failing to properly impeach Erica Gray with her prior conviction of false statement to a police officer. The testimony concerning the DSS incident is a specific motive for both Erica Gray and Donald Martin to lie about the alleged involvement of Mr. Teamer in the burglary. The prior crime went to the issue of her general reputation for truthfulness. The DSS incident had a much greater impact on her credibility.

Question III

Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective because of his failure to properly seek admission of the cocaine and alcohol use by the driver of the car involved in the felony driving under the influence?

In 1990 this Court said “Because of our present ‘war on drugs’, and because any involvement with cocaine contributes to the destruction of ordered society, we hold that mere possession of cocaine is a crime of moral turpitude.” *State v. Major*, 301 S.C. 181, 184, 391 S.E.2d 235, 237 (1990). The use of cocaine by the driver of the other vehicle was admissible to impeach his credibility. At the trial below defense counsel did not argue that the cocaine use was a basis for impeaching the credibility of the witness. App. at 308, ll 13-25 to 311, ll 1-21. Questions concerning the use of cocaine were admissible for that purpose.

At the Post Conviction Relief hearing trial counsel admitted that he had not reviewed the medical record of the driver of the other car. He further did not mention the use of cocaine by the driver to the trial judge. App. at 751, ll 4-19. He did not seriously argue against the ruling of the trial judge that because the witness was found not guilty at a bench trial he still should be able to question the witness concerning his drinking and cocaine use on the night of the collision.

In ruling against Mr. Teamer on this issue the Post Conviction Relief judge ruled that Mr. Teamer’s “claim simply boils down to an assertion that trial counsel should have performed better not that his performance was ineffective.” App. at 1399. Trial counsel made no argument for the admissibility of the fact that the driver of the other car had been drinking or taking cocaine on the night of the collision. As one court has said “An acquittal is not evidence

of innocence but rather evidence of the failure of the State to prove guilt of a defendant beyond a reasonable doubt.” *State v. Turner*, 352 S.W.3d 425, 430 (Tenn. 2011). Thus, the not guilty by bench trial would not be proof the driver was not in fact under the influence of alcohol and drugs. *See, also, People v. Parham*, 147 A.D.2d 944, 537 N.Y.S.2d 384 (1989)(holding impeachment of defense witness with acquitted conduct to be proper)

The Post Conviction Relief Judge further found that “trial counsel provided a valid reason for employing his strategy in attempting to admit the records and question James Young.” App. at (25). But the Post Conviction Relief Judge never states what the strategy was nor does the transcript reveal any true strategy concerning how he handles the trial Judge’s refusal to admit the evidence of drinking and drug use.

Question IV

Should this Court reverse the decision of the Post Conviction Relief Judge on these issues 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

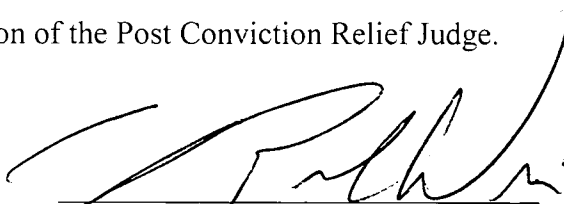
determining counsel's effectiveness, and in his conclusion that the entire post conviction record, *viewed as a whole* and cumulative of mitigation evidence presented originally, raised 'a reasonable probability that the result of the sentencing proceeding would have been different' if competent counsel 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 as additional sustaining grounds, demonstrate that Mr. Teamer was not adequately represented in attacking the credibility of the witnesses against him, including the driver of the other vehicle involved in the collision. By acquitting Mr. Teamer of the armed robbery charge, the jury obviously had problems with the credibility of Erica Gray and Donald Martin. While the state may argue that any one of the additional impeaching information may not have changed the verdict, one cannot rationally argue that two additional pieces of evidence taken as a whole, would not have had an impact on the jury.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition of Certiorari of the Applicant on these issues and reverse the decision of the Post Conviction Relief Judge.

June 23, 2014



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COURT OF COMMON PLEAS

S.C. Supreme Court

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Nathaniel Charles Teamer, Respondent-Petitioner,

vs

The State, 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 Respondent in the above entitled case. That on July 21, 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the revised Petition for Writ of Certiorari in the above case addressed to Suzanne White, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina, 29211.

SWORN to and Subscribed

Sandy Traynham

before me this 21 day

of July, 2014.

Nancy Jane Harter (L.S.)
Notary Public for South Carolina
My Commission expires: 11/30/22