

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Cherokee County  
Robin B. Stilwell, Circuit Court Judge  
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**RECEIVED**

JUL 30 2014

**S.C. Supreme Court**

JEROME W. RAINEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000641  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's conviction of eavesdropping or peeping tom in general sessions court violated double jeopardy when he pled guilty to the same set of facts in municipal court?

## STATEMENT

On March 15, 2012, petitioner was convicted of eavesdropping/peeping tom at a jury trial held before the Honorable J. Derham Cole in Cherokee County. A sentence of three (3) years was imposed along with a fine of \$500 provide upon service of eighteen (18) months and a fine of \$250 with the balance suspended with probation for five years thereafter. Petitioner represented himself and Matthew Kendall, Esquire, was the assistant solicitor. (App. p. 1 – p. 170).

Petitioner filed an application for post-conviction relief on August 3, 2012. (App. p. 171 – p. 180). Respondent filed a return dated August 20, 2013. (App. p. 181 – p. 184). An evidentiary hearing was held on November 13, 2013, before the Honorable Robin B. Stilwell. Petitioner was present and was represented by Thomas A. Killoren, Jr., Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. Petitioner testified at the hearing. (App. p. 185 – p. 201). On March 5, 2014, Judge Stilwell issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 206 – p. 210).

This petition follows.

## ARGUMENT

Petitioner's conviction for eavesdropping or peeping tom in general sessions court violated double jeopardy when he pled guilty to the same set of facts in municipal court.

Petitioner was arrested for eavesdropping/peeping tom on May 5, 2011. (App. p. 202). He pled guilty to this charge in municipal court on December 9, 2011, but the charge was listed as indecent exposure. (App. p. 205). At the August 2011 term of the Cherokee County Court of General Sessions, petitioner was indicted for eavesdropping or peeping tom. (App. p. 211). He was convicted of that charge after a jury trial held on March 15, 2012. Both the arrest ticket and the indictment listed the statutory violation as S.C. Code § 16-17-470. (App. p. 202; p. 211). The PCR transcript makes it clear that petitioner was given two tickets in municipal court. One ticket was for indecent exposure, the other ticket was for eavesdropping or peeping tom. (App. p. 190, lines 2 – 8).

The incident report for the indecent exposure charge described the following factual scenario:

On date & times indicated C/V & witness that subject #1 had so in fact come onto property w/i viewing distance of bathroom window exposing his penis and was ejaculating while she was taking shower. I/O observed that bathroom window did not have curtain. C/V & witness also stated that same subject had in fact been seen performing same act on a prior date. Subject #1 was located w/i property back of residence w/ zipper unzipped. Subject #1 Mirandized, whom's statement after Mirandized was that he had urinated at said area while cutting grass to adjacent property. I/O obtained written statements from both C/V & witness. Subject arrested and charged as indicated.

(App. p. 203)

The indictment for eavesdropping or peeping tom was for the following set of facts:

That William Jerome Rainey, did in Cherokee County on or about May 5, 2011, willfully and unlawfully go about or upon the premises of Kimberly M. Wilkins, for the purpose of spying on and into the victim's home by peeping through

the victim's window and invading the said victim's property, in violation of § 16-17-470, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

As can be seen from the above, the same set of facts are contained in both offenses. The Double Jeopardy Clause contained in the Fifth Amendment protects against being prosecuted for the same offense twice. In Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084 (1990), the Supreme Court of the United States held that if the same conduct encompasses two offenses, a defendant can only be tried on one offense. Trial on both offenses would violate double jeopardy. Grady v. Corbin, however, was overruled in United States v. Dixon, 509 U.S. 688, 113 S.Ct. 2849 (1993). Now the courts use the traditional test under Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180 (1932), which basically holds that if the elements of both offenses are different, a defendant can be prosecuted on both offenses.

CONCLUSION

Petitioner's writ should be granted and his conviction for eavesdropping or peeping tom should be reversed.

Respectfully submitted,

Robert M. Pachak  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of July, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHEROKEE COUNTY  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

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JEROME W. RAINEY,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000641

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PETITION TO BE RELIEVED AS COUNSEL

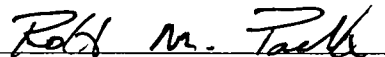
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Counsel for Jerome W. Rainey states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 13, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Jerome W. Rainey.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of July, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Cherokee County  
Robin B. Stilwell, Circuit Court Judge

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JEROME W. RAINEY,

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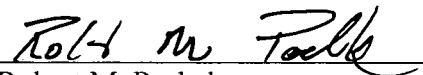
RESPONDENT

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CERTIFICATE OF SERVICE

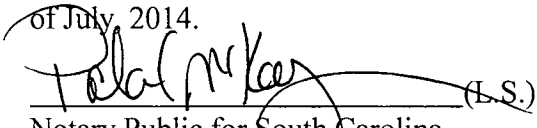
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jerome W. Rainey, at 209 Camellia Circle, Gaffney, SC 29341, this 30th day of July, 2014.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of July 2014.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.