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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Clifton Newman, Circuit Court Judge

RECEIVED

OCT 15 2014

S.C. Supreme Court

IAN RICE,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPELLATE CASE NO. 2013-001781

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. The State's argument that there was no evidence in the record that the courtroom was closed to the public during Respondent's trial is (1) not preserved for appellate review; and (2) unfounded as the transcript of Respondent's trial and the testimony at the PCR evidentiary hearing establishes that the courtroom was closed to the public during the testimony of two witnesses.
- II. The State's argument that protection of the confidential informant warranted closure of the courtroom is not preserved for this Court's review where the State has not presented this argument in its questions presented for review to this Court.
- III. Trial counsel provided ineffective assistance of counsel by failing to object on the record to the closure of the courtroom and by failing to preserve the issue for appellate review where the Trial Court's closure of the courtroom during the testimony of the confidential informant and a police officer would have been reversed on appeal. The State advanced no overriding interest that was likely to be prejudiced, the closure was broader than it needed to be, the Trial Court did not consider reasonable alternatives to closing the proceeding, and the Trial Court did not make findings adequate to support the closure of the courtroom.
- IV. The PCR court correctly ruled that Respondent suffered actual prejudice by trial counsel's deficient performance in failing to object on the record to the closure of the courtroom and for failing to preserve the issue for appeal where the Trial Court's closure of the courtroom would have been reversed on appeal. Furthermore, had the Trial Court's error in closing the courtroom been preserved for appellate review, such error would not have been subject to a harmless error or overwhelming evidence of guilt analysis where the denial of a public trial is a structural error subject to automatic reversal.

STATEMENT OF THE CASE

Indictments

During the October 2006 term, Respondent Ian Rice was indicted by the Laurens County Grand Jury for (1) distribution of crack cocaine in violation of S.C. CODE ANN. § 44-53-375; and (2) distribution of a crack cocaine within proximity to a park or school in violation of § 44-53-445. App. 179-180; 183-184.

Trial and Guilty Verdict

Mr. Rice proceeded to trial before the Honorable D. Garrison Hill and a jury on November 13-14, 2007. App. 1. Mr. Rice was represented by Clyde L. Pennington, Jr., and the State was represented by Assistant Solicitors Mindy W. Zimmerman and Ronald N. Fleming. Id.

On November 14, 2007, the jury found Mr. Rice guilty on both charges. App. 159, l. 24 – 160, l. 7. Judge Hill sentenced Mr. Rice to seventeen years for distribution of crack cocaine, third offense, and ten years on the related proximity charge. The sentences were ordered to run concurrent. App. 165, ll. 9-14; 177; 181. Mr. Rice's trial counsel did not file a timely direct appeal. App. 248, ll. 11-17.

Application for Post-Conviction Relief, Evidentiary Hearing, and Order Granting Relief

Mr. Rice filed an application for post-conviction relief ("PCR") on June 9, 2008. App. 168-176. The State filed its Return on or about January 7, 2009. App. 189-193.

Mr. Rice filed an Amended Petition for PCR on January 18, 2013 and thereafter filed a Memorandum in Support of his PCR Application. App. 194-196; Supp. App. 1-10. In this Memorandum, Mr. Rice argued that his trial counsel was ineffective for failing to

object to the State's request to the Trial Court to close the courtroom prior to the testimony of the State's star witness, the confidential informant, because trial counsel's failure to object both denied Mr. Rice the right to a fair, impartial, and public trial and failed to preserve the issue for an appeal. Supp. App. 5-8.

An evidentiary hearing was held before the Honorable Clifton B. Newman on March 11, 2013. App. 227. Mr. Rice was represented by Laura McCall Saunders, and the State was represented by Assistant Attorney General J. Rutledge Johnson. Id. At the hearing, Solicitor Mindy Zimmerman, trial counsel Clyde Pennington, and Mr. Rice each testified. App. 234-270.

At the conclusion of the hearing, Mr. Rice and the State both submitted memorandums supporting their respective positions on whether Mr. Rice was entitled to the grant of post-conviction relief. App. 202-226.

On July 9, 2013, Judge Newman issued his Order Granting Mr. Rice's Application for PCR, ruling that trial counsel was ineffective in failing to object on the record to the Trial Court's closure of the courtroom and that Mr. Rice was prejudiced by his trial counsel's deficient performance. App. 292-305.

The State then petitioned this Court for a writ of certiorari, and Mr. Rice hereby responds.

STATEMENT OF FACTS

Relevant facts of trial:

Before the State called its first witness against Mr. Rice, the solicitor informed the Trial Court:

Your Honor, the first witness is the witness that we have discussed previously that we would request the courtroom be cleared prior to her taking the stand. It is Amanda Sanford.

App. 36, ll. 13-17.

The Trial Court asked to see the attorneys at the bench, and an unrecorded bench conference took place. App. 36, ll. 18-20. Mr. Rice's trial counsel did not place what was said at the bench conference on the record after it occurred. The court then took a ten minute break and the jury was excused. The jury was brought back in after the short break. The Trial Court instructed the solicitor to call her first witness, and she called Amanda Sanford. App. 36, l. 21 – 37, l. 9.

Amanda Sanford testified she became involved in Mr. Rice's case on March 30, 2006. She was a crack user and had been convicted a defrauding a restaurant. App. 38, ll. 5-25. She stated that she went to Detectives Goggins and Campbell because she wanted to help them, but she claimed no promises were made by them to get her to work with them. Amanda testified she was offered \$20 for her time and service after she served as a confidential informant. App. 38, ll. 12-19; 39, ll. 9-16.

Amanda alleged that she bought crack cocaine from Mr. Rice on March 30, 2006 for \$20. App. 39, l. 21 – 40, l. 16. A video was made of Amanda allegedly purchasing the crack cocaine from Mr. Rice and entered into evidence as State's Exhibit 1. App. 43, l. 23 – 44, l. 23. A second video was also made where Amanda had to go back and get better

footage of Mr. Rice, and this second video was entered into evidence as State's Exhibit 2. App. 44, l. 9 – 25.

Amanda explained that there were two separate videos because on the first video where she allegedly purchased the crack cocaine from Mr. Rice, he was not actually captured on the video. She therefore went back to make sure that Mr. Rice was on camera in the second video. App. 45, l. 16 – 46, l. 1.

On cross-examination, Amanda admitted she was charged with defrauding a restaurant on March 20, 2006, just ten days before she made the alleged drug buy from Mr. Rice. App. 51, ll. 1-24.

Amanda further admitted that on the first video where she made the alleged buy, it was hard to tell on the video that it was Mr. Rice. She said that is why she circled back around to get a better view of him on camera for the second video so that law enforcement would have a better picture of Mr. Rice. App. 57, ll. 12-18. Amanda further conceded that she did not buy any drugs from Mr. Rice on the second video, the only video where he was pictured. App. 59, l. 22 – 59, l. 2; 65, ll. 3 – 15.

On re-direct examination, Amanda acknowledged that she served as a confidential informant for law enforcement about five or six times and bought drugs from several different individuals. App. 61, l. 3 – 62, l. 23.

When asked on re-cross examination why she had earlier testified that the alleged drug buy from Mr. Rice was a one-time thing but yet admitted to the solicitor that she had served as a confidential informant and bought from other individuals at least five times, Amanda's response revealed to the jury that the courtroom had been cleared:

A: I thought we were only, I thought we were only here to talk about Ian and not everything else. I think this case just has to do with Ian.

Q: Miss Sanford, I asked if you had ever made any other buys in front of these twelve people with common sense and you said no?

A: I didn't know I [sic] supposed to say that in public and give names. I didn't know. That is why they cleared the courtroom.

App. 66, ll. 3-11.

With no indication on the record that the courtroom was then re-opened to the public after Amanda Sanford's testimony, the State called its next witness, Detective Tyrone Goggins of the Clinton City Police Department. App. 67, l. 12 – 68, l. 9. He testified that he worked with Amanda Sanford on March 30, 2006 and provided her with money to purchase drugs as a confidential informant. He also provided her a vehicle equipped with a video camera. App. 73, l. 22 – 76, l. 11.

Detective Goggins testified that while the alleged drug buy was occurring, he could not see what was happening but could only hear it. App. 76, ll. 12-16. When Amanda returned with the drugs, Detective Goggins observed that Mr. Rice's face was not on the first video and therefore he wanted Amanda to drive back by to get his whole face on the video. The first video only captured part of a North Carolina State t-shirt. Detective Goggins did not ask Amanda to purchase any drugs the second time. Detective Goggins testified he did not want her to make any additional purchase but just get Mr. Rice's picture on the video. App. 78, ll. 2-24.

While Detective Goggins received the drugs from Amanda on March 30, 2006, he did not deliver the drugs for testing to SLED until October 3, 2006. App. 79, l. 2 – 80, l. 22. The drugs were determined to be 0.20 grams of crack cocaine. App. 108, ll. 4-5.

On cross-examination, Detective Goggins conceded there was no drug transaction on the second video where Mr. Rice was pictured. App. 85, l. 22 – 86, l. 4. Detective Goggins also admitted that after he received the drugs from Amanda on March 30, 2006, he just left them in a box with a bunch of other drugs from other drug buys until October 2006. He said he had no idea how many drug buys might have been made from other individuals between March and October. App. 88, l. 5 – 89, l. 10. Detective Goggins also admitted that while he searched Amanda before the alleged drug buy from Mr. Rice, he did not fully search her and would not have checked inside her bra to see if she had hidden any drugs there. App. 91, l. 11 – 92, l. 14.

The jury found Mr. Rice guilty of both the distribution charge and the related proximity charge and he was sentenced to concurrent sentences of seventeen years and ten years respectively. App. 159, l. 24 – 160, l. 7; 166, ll. 9-14.

Relevant facts from evidentiary hearing:

Solicitor Mindy Zimmerman who tried the case against Mr. Rice first testified at the PCR hearing. She recalled having a bench conference with the Trial Court and Mr. Rice's trial counsel regarding the closure of the courtroom. App. 236, l. 17 – 237, l. 1. She testified that the solicitor's office made all defendants who had pending cases come sit in the courtroom for the whole time. Amanda Sanford, the confidential informant in Mr. Rice's case, had been used by the police department to make multiple drug buys from different defendants unrelated to Mr. Rice's case. Many of these defendants were apparently sitting in the courtroom, and Amanda became nervous about testifying because she thought these other defendants would figure out she had been the informant in their cases as well. Zimmerman testified that she and trial counsel then approached the bench because they did

not want to argue in open court in front of all these other defendants. She stated the State asked that all of the other defendants be removed from the courtroom for Amanda's testimony so that they would not find out that she was the informant against them. App. 237, ll. 4-22.

Zimmerman agreed that the bench conferences were unrecorded and not placed on the record. App. 237, l. 23 – 238, l. 3. She did not recall any objection being made by Mr. Rice's trial counsel. App. 238, ll. 4 – 19.

Zimmerman further agreed that if Amanda had refused to testify, she would have not called the case against Mr. Rice. App. 238, l. 23 – 239, l. 4.

Clyde Pennington, Mr. Rice's trial counsel, then testified at the PCR evidentiary hearing. With respect to the closure of the courtroom, Pennington recalled the solicitor wanting the courtroom closed because of issues with the confidential informant. App. 244, ll. 11-22. He conceded that he did not object to the closure of the courtroom on the record. App. 245, ll. 3-7. He stated that during the bench conference, he explained to the Trial Court that he did not see any reason for the courtroom to be closed since it was the solicitor who was mandatorily holding the other defendants in the courtroom and the solicitor was free to just let those other defendants leave. Pennington agreed that he should have placed his objection on the record to preserve the issue for appeal since he saw no reason for the closure of the courtroom. He admitted that he did not preserve the issue for appeal. App. 245, ll. 7-22.

Pennington further testified that the trial judge made it clear that he was going to close the courtroom. App. 245, ll. 24-25. Pennington additionally stated that after Amanda

Sanford testified at trial, there was no mention in the transcript of the courtroom being reopened to the public when Detective Goggins began his testimony. App. 246, ll. 1-7.

Mr. Rice testified that he was prejudiced by the closure of the courtroom. He believed that Amanda Sanford was not going to testify unless the courtroom was closed. App. 263, ll. 16-24; 264, l. 23- 265, l. 3. Mr. Rice further testified that the courtroom was packed the day of his trial and did not include just other defendants waiting on their pending cases. He asserted that his family and friends were in the courtroom when the courtroom was cleared. App. 264, ll. 3-22; 268, l. 21 – 269, l. 1.

Order of Dismissal:

The PCR court granted post-conviction relief to Mr. Rice and remanded the case for a new trial. App. 292-305. The PCR court found that trial counsel had failed to object on the record to the closure of the courtroom, thus failing to preserve this issue for appeal. App. 294. The PCR court further found that the jury was aware the courtroom was closed because the confidential informant revealed during her testimony that the courtroom had been cleared. App. 295.

The PCR court ruled that trial counsel's failure to object to the closure of the courtroom constituted ineffective assistance of counsel where Mr. Rice was denied his fundamental right to a public trial. The PCR ruled that Mr. Rice suffered actual prejudice by trial counsel's failure to object to the closure of the courtroom on the record and failure to preserve the issue for appeal where the State presented no justification for the closure of the courtroom and the Trial Court did not articulate any reasons for the closure. App. 294-303.

ARGUMENT

- I. The State's argument that there was no evidence in the record that the courtroom was closed to the public during Respondent's trial is (1) not preserved for appellate review; and (2) unfounded as the transcript of Respondent's trial and the testimony at the PCR evidentiary hearing establishes that the courtroom was closed to the public during the testimony of two witnesses.**

The State first contends that the PCR court erred in finding that trial counsel was ineffective for not objecting to the clearing of the courtroom, arguing that there was no evidence in the record that people other than defendants from unrelated cases were excused and released from the courtroom by the solicitor.

This argument is not preserved for appellate review by this Court. The State did not make this argument to the PCR court at either the evidentiary hearing or in its Memorandum submitted to the PCR court in opposition to the application for post-conviction relief. App. 216-226; 285, 1. 23 – 287, 1. 22. The PCR court therefore did not rule on this specific issue now asserted by the State that the courtroom was in fact not closed. App. 292-305. The State did not file any Rule 59(e) motion with the PCR court for any reconsideration of this issue which the State did not even raise in the first instance.

“It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Therefore, the State cannot argue for the first time on appeal that there was no evidence that the courtroom was in fact closed.

Furthermore, the trial transcript and the testimony at the PCR evidentiary hearing established that the courtroom was closed. “This Court will uphold the findings of the PCR

judge when there is any evidence of probative value to support them.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Just before the confidential informant’s testimony, the solicitor requested to the Trial Court that the courtroom “be cleared” prior to the confidential informant taking the stand. App. 36, ll. 13-17. During her testimony at trial before the jury, the confidential informant referenced the courtroom being cleared. App. 66, ll. 9-11.

At the PCR hearing, Mr. Rice’s trial counsel confirmed that the Trial Court had in fact closed the courtroom: “The Court essentially make [sic] it clear that he was going to let people go and close the courtroom.” App. 245, ll. 24-25. Trial counsel furthermore testified that after the confidential informant testified, there was no mention in the trial transcript of the courtroom being reopened to the public and that additional testimony was taken while the courtroom was still closed, specifically the testimony of Detective Goggins. App. 246, ll. 1-7. Finally, Mr. Rice testified that he had family and friends present in the courtroom right before the courtroom was cleared. App. 264, ll. 3-22.

Therefore, even if this issue is preserved, there was certainly evidence in the record establishing that the courtroom was indeed closed when both the confidential informant and Detective Goggins testified during the trial of Mr. Rice. The PCR court did not err in determining that the courtroom was closed.

II. The State's argument that protection of the confidential informant warranted closure of the courtroom is not preserved for this Court's review where the State has not presented this argument in its questions presented for review to this Court.

Included under the State's argument that there was no evidence in the record that people other than defendants from unrelated cases were excused and released from the courtroom by the solicitor is a brief mention that trial counsel was not ineffective for failing to object to the closure of the courtroom because protection of the confidential informant warranted closing of the courtroom during her testimony. See State's Petition, p. 7.

The State, however, does not raise this argument in its questions presented for this Courts' review. See State's Petition, p. 2. "Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal." See Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642-43 (2012). Therefore, this argument by the State is not preserved for this Court's review.

III. Trial counsel provided ineffective assistance of counsel by failing to object on the record to the closure of the courtroom and by failing to preserve the issue for appellate review where the Trial Court's closure of the courtroom during the testimony of the confidential informant and a police officer would have been reversed on appeal. The State advanced no overriding interest that was likely to be prejudiced, the closure was broader than it needed to be, the Trial Court did not consider reasonable alternatives to closing the proceeding, and the Trial Court did not make findings adequate to support the closure of the courtroom.

Even if preserved, there is no merit to the State's argument that the closure of the courtroom was warranted in this case for protection of the confidential informant. The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee a criminal defendant a public trial. Waller v. Georgia is the seminal United State Supreme Court case to analyze the accused's explicit right to a public trial under the Sixth Amendment. 467 U.S. 39 (1984). Waller also recognizes the coextensive nature between a defendant's right to a public trial under the Sixth Amendment and that of the public under the First Amendment:

Nevertheless, there can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. The central aim of a criminal proceeding must be to try the accused fairly, and "[o]ur cases have uniformly recognized the public-trial guarantee as one created for the benefit of the defendant.

Id. at 46 (internal citations omitted).

A public trial ensures that the public will see that a defendant is "fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions."

A public trial is for the benefit of the accused. Id. (internal citations omitted).

The Waller Court held further that under the Sixth Amendment, any closure of a suppression hearing over the objections of the accused must meet the following test: the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; the closure must be no broader than necessary to protect the interest; the trial court must consider reasonable alternatives to closing the hearing; and it must make findings adequate to support the closure.” Id. at 48; see also Press Enterprise Co. v. Superior Court of California, 464 U.S. 501, 510 (1984) (“The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.”).

In recent years, the United States Supreme Court has stressed that “[t]rial courts are obligated to take every reasonable measure to accommodate the public attendance at criminal trials.” Presley v. Georgia, 130 S. Ct. 721, 725 (2010).

In Mr. Rice’s case, the State did not advance an overriding interest that was likely to be prejudiced. At the PCR hearing, the solicitor testified that she only wanted the courtroom cleared because her own office was forcing other defendants in unrelated cases to remain in the courtroom and she was worried those defendants would figure out that Amanda Sanford was the confidential informant in their cases. App. 237, ll. 4-22. The solicitor testified that the confidential informant was nervous about testifying in front of those defendants. App. 237, ll. 12-16.

Closure of the courtroom to the public was not necessary to alleviate the State’s concern. The State simply could have told defendants in unrelated cases that they did not

have to remain in the courtroom. Mr. Rice's trial counsel testified at the PCR hearing that these defendants most likely would have all left if not for the State requiring them to remain in the courtroom. App. 245, ll. 11-14.

Contrary to any argument by the State that the confidential informant might have been more truthful with the courtroom closed, the United States Supreme Court has recognized that a public trial "encourages witnesses to come forward and discourages perjury." Waller, 467 U.S. at 46. There was no necessity to close the entire courtroom to the public simply because the confidential informant was nervous about testifying. The confidential informant's testimony was the key piece of evidence against Mr. Rice, and he was entitled to a public trial during her testimony so that the public could see that he was being fairly dealt with. Id.

Furthermore, the Trial Court did not articulate any specific findings on the record supporting the closure of the courtroom and certainly did not ensure that the closure was no broader than necessary where the courtroom remained closed to the public during Detective Goggins' testimony. The State has never advanced any reason why the courtroom should have remained closed during Detective Goggins' testimony. The Trial Court also did not consider any reasonable alternatives to closing the courtroom.

The cases cited by the State for the proposition that protection of witnesses is a compelling interest to permit closure of the courtroom during the witness's testimony are inapplicable to Mr. Rice's case, especially where in Mr. Rice's case the courtroom remained closed during the testimony of a witness (Detective Goggins) who was not in need of any sort of protection. In addition, the trial courts in these cases complied with the factors set forth in Waller unlike the Trial Court in Mr. Rice's case. Cf. Brown v. Kuhlmann, 142 F.3d

529 (2nd Cir. 1998) (holding brief closure of trial during testimony of undercover officer, whose testimony was merely corroborative, did not violate right to a public trial and further noting that trial court made findings adequate to support closure); United States v. De Los Santos, 810 F.2d 1326 (5th Cir. 1987) (finding the trial court met all four requirements of Waller to close suppression hearing).

The Trial Court's closure of the courtroom in Mr. Rice's trial did not comport with the factors set forth in Waller. Accordingly, Mr. Rice's trial counsel was ineffective for failing to object on the record to the closure of the courtroom and for failing to preserve this issue for appellate review where the Trial Court's closure of the courtroom would not have withstood scrutiny on appeal.

IV. The PCR court correctly ruled that Respondent suffered actual prejudice by trial counsel's deficient performance in failing to object on the record to the closure of the courtroom and for failing to preserve the issue for appeal where the Trial Court's closure of the courtroom would have been reversed on appeal. Furthermore, had the Trial Court's error in closing the courtroom been preserved for appellate review, such error would not have been subject to a harmless error or overwhelming evidence of guilt analysis where the denial of a public trial is a structural error subject to automatic reversal.

The State's second question presented for this Court's review is whether the PCR court erred in finding there was presumed prejudice under United States v. Cronin, 466 U.S. 468 (1984) and erred in granting post-conviction relief where there was alleged overwhelming evidence of Mr. Rice's guilt.

The PCR court did not simply find that there was presumed prejudice but also ruled that Mr. Rice suffered actual prejudice under Strickland v. Washington, 466 U.S. 668 (1984) due to his trial counsel's failure to object to the closure of the courtroom on the record and failure to preserve this issue for appellate review. App. 302-303. As explained above, had trial counsel objected to the closure of the courtroom on the record, the issue would have been preserved for and reversed on appeal where the State advanced no overriding interest that was likely to be prejudiced, the closure was broader than it needed to be, the Trial Court did not consider reasonable alternatives to closing the proceeding, and the Trial Court did not make findings adequate to support the closure.

The State attempts to argue that Mr. Rice was not prejudiced by his trial counsel's failure to object on the record to the closure of the courtroom because the courtroom was only closed during the confidential informant's testimony. First, that is an incorrect assertion because the evidence at the PCR hearing established that the courtroom remained

closed during not only the confidential informant's testimony, but during Detective Goggins' testimony as well. App. 246, ll. 1-7.

Second, the State appears to argue that Mr. Rice was not prejudiced by this trial counsel's deficient performance because the courtroom was not closed during the entire trial. Mr. Rice's trial was closed to the public during the testimony of at least two crucial witnesses. The United States Supreme Court has made it clear that the unjustified closure of any portion of a trial violates a defendant's Sixth Amendment public trial guarantee. In Waller v. Georgia, 467 U.S. 39 (1984), the Court held that closure of the suppression hearing prior to the trial testimony violated the defendant's Sixth Amendment right to a public trial. In Presley v. Georgia, 130 S. Ct. 721 (2010), the Court held that a defendant's Sixth Amendment right to a public trial was violated when the public was excluded from the voir dire of prospective jurors.

Therefore, even if the entire trial does not remain closed to the public, a defendant's right to a public trial can still be violated if any portion of the trial is closed. Mr. Rice's trial was unjustifiably closed during the testimony of two witnesses, including the State's star witness, and no doubt his right to a public trial under the Sixth Amendment was violated. The State's contention that he was not prejudiced because his entire trial was not closed is without merit.

Finally, the State argues that any alleged overwhelming evidence of guilt precludes a finding that Mr. Rice was prejudiced by his trial counsel's deficient performance. The prejudice to Mr. Rice results from his trial counsel's failure to preserve an issue that would have been reversed on appeal. On appeal, the Trial Court's unjustified closure of the courtroom would not have been subject to a harmless error or overwhelming evidence of

guilt analysis because the United States Supreme Court has recognized that the denial of a public trial is a structural error subject to automatic reversal. Neder v. United States, 119 S. Ct. 1827, 1833 (1990) (referencing Waller). A structural error contains a “defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself.” Neder, 119 S. Ct. at 1833 (internal citations omitted). Such an error deprives a defendant of “basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair.” Id. (internal citations omitted).

The State therefore improperly inserts an overwhelming evidence guilt analysis where it does not apply. Moreover, there was not overwhelming evidence of Mr. Rice’s guilt where his face did not appear on the video of the drug transaction and therefore the question of whether Amanda Sanford purchased the drugs from him greatly depended on her credibility – credibility which was not tested because the Trial Court improperly closed the courtroom during her testimony. See Waller, 467 U.S. at 46 (noting that public trials discourage perjury).

CONCLUSION

In conclusion, the PCR court's Order granting post-conviction relief to Respondent Ian Rice is supported by well-established law and the facts present in his case. Accordingly, this Court should deny the State's Petition for a Writ of Certiorari and affirm the PCR's court grant of a new trial for Mr. Rice.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT

This 15th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County
Clifton Newman, Circuit Court Judge

IAN RICE,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPELLATE CASE NO. 2013-001781

CERTIFICATE OF SERVICE


I certify that a true copy of the return to petition for writ of certiorari in this case has been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 15th day
of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021