

STATE OF SOUTH CAROLINA
In the Supreme Court

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OCT 17 2014

CERTIORARI TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001284

The State, Petitioner-Respondent,

vs

Nathaniel Charles Teamer Respondent-Petitioner.

REPLY TO RETURN TO PETITION FOR
WRIT OF CERTIORARI

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
Bar #: 006188

Attorney for Respondent-Petitioner

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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?

Neither party disputes that Corporal Darity testified based upon hearsay that his conclusion was that Nathaniel Teamer crossed the centerline and caused the collision which resulted in the charges being brought against Mr. Teamer. The State now contends that simply because defense counsel through cross-examination established that Corporal Darity's conclusions were based on hearsay that counsel was effective. Such a conclusion is simply not the law.

The State has not contended that the testimony of Corporal Darity did not violate *Crawford v. Washington*, 541 U.S. 36 (2004). Indeed they cannot for the testimony was testimonial as the information was obtained during the investigation of the crime.

The State has contended that because James Young testified that "I saw lights coming at me. As soon as the lights, the car got across that knoll, it's just like it turned right into me." (App. at 360) that Mr. Teamer has not been prejudiced by his counsel's failure to object to the officer's testimony. The error in admitting the improper testimony of Corporal Darity is simply compounded by this testimony. Because of the improper testimony of the officer, the testimony of Mr. Young is given additional support. The jury was able to conclude that Mr. Young was telling the truth because his testimony matched the hearsay expert testimony.

The State contends "because of the testimony of all law enforcement witnesses, as

well as James Young, the Court properly found Respondent had failed to prove that the outcome of the trial would have been different had Counsel objected to the statement.” Br. of Petitioner-Respondent at 8. But no law enforcement officer ever testified that they saw Mr. Teamer cross the centerline and cause the collision. Officer David Michael Evett, who was following Mr. Teamer, testified “And then I saw a shower of sparks.” (App. at 336). The only evidence that Mr. Teamer crossed the centerline was the hearsay testimony of Corporal Darity and the testimony of James Young. Without the inadmissible testimony the jury well could have concluded that Mr. Teamer did not cause the collision.

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?

The record in this case established that defense counsel had a good faith basis to ask Donald Martin, Erica Gray and Mary Gray about the accusation against Mr. Martin that he had committed criminal sexual conduct with a minor against the minor daughter of Erica Gray. App. at 839. The State incorrectly argues that unless the Department of Social Services investigates the case, then Mr. Teamer has no basis to ask about the alleged abuse. No case or rule supports that conclusion.

The State also erroneously argues “The evidence that was offered would have been excluded because it was merely reported incidents, not any convictions or sworn statements to use against Martin or the Grays.” Br. of Petitioner- Respondent at 9. Mr. Teamer was not

seeking to impeach any witness with the proof that they in fact committed a crime of moral turpitude under Rule 609 of the South Carolina Rules of Evidence. Nor was Mr. Teamer seeking to impeach Mr. Martin with a specific incidence of conduct under Rule 608(b). Mr. Teamer sought to bring up the incident to show the bias or prejudice of Mr. Martin and the Grays against Mr. Teamer under Rule 608(c). As this South Carolina Supreme Court has said “In this case, appellant sought to explore past dealings between Brown and the officer prosecuting the current charges, not to impeach Brown through those dismissed charges, but rather to expose Brown's bias and prejudice in the present case. This excluded evidence had ‘a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity’ of Brown's testimony.” *State v. Jones*, 343 S.C. 562, 571, 541 S.E.2d 813, 818 (2001). The same is true here. The allegation of sexual abuse had a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of the testimony of Mr. Martin and the Grays.

The State, without explaining why, has argued that the reporting of the sexual abuse by Mr. Teamer would also supply a motive for Mr. Teamer to burglarize the residence of Mr. Martin. No testimony in the trial of the Post Conviction relief hearing establishes why the reporting of criminal sexual conduct with a minor could establish a motive to commit a burglary and armed robbery of the residence of the person who perpetrated the crime.

Had trial counsel adequately presented the evidence of Mr. Teamer reporting the crime against Mr. Martin, the jury would have heard, and defense counsel could have argued, that Mr. Martin and the Grays had every reason to accuse Mr. Teamer of breaking into their house. The jury did not believe that the person who broke into the house committed an armed robbery, so the credibility of the key witnesses against Mr. Teamer was suspect in the eyes and mind of the

jurors. This additional fact could easily have been what the jury needed to disregard all of their testimony.¹

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 response to this issue, the State relies exclusively upon Rule 609 of the South Carolina Rules of Evidence. But that is not the only rule by which a person may be impeached. Under Rule 608(b). As the South Carolina Supreme Court has said “ Essentially, Rule 608(b) allows specific instances of conduct to be inquired into on cross, but does not allow those instances of conduct to be proved by extrinsic evidence.” *Mizell v. Glover*, 351 S.C. 392, 401, 570 S.E.2d 176, 180 (2002). Mr. Teamer’s attorney should have invoked this rule to cross-examine Mr. Young about his possession of cocaine on the night in question. He certainly had a good faith basis to ask the question.

Contrary to the position of the State in its brief, a conviction is not required to impeach under Rule 608. The same principle would apply to the cocaine use and the alcohol level. As Mr. Young was the sole witness who had direct testimony about the cause of the collision, any impeachment of his credibility was crucial to Mr. Teamer’s defense.

Question IV

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

¹ While the solicitor made a veiled reference to the incident in his opening statement, the state offered no testimony as to the other specific reason for Mr. Teamer to break into Mr. Martin’s residence. App. at 113, ll 7-9.

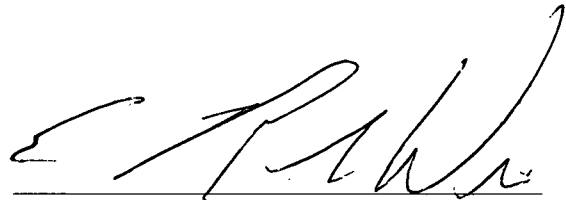
these issues under the cumulative error theory?

At the lower court Mr. Teamer won a new trial, he had no need to ask the trial judge to reconsider the ruling and rule on a cumulative effect of the errors. Now that the State has requested a petition for a writ certiorari, Mr. Teamer has a need to address the issues upon which his relief was denied. In addition, as no appellate court in South Carolina has said a Post Conviction Relief judge is to use a cumulative effect in the ruling, to have so requested would have been a futile act.

CONCLUSION

For the foregoing reasons and for the reason I in the opening brief, this Court should grant the Petition of Nathaniel Teamer for a Writ of Certiorari and reverse the ruling of the Post Conviction Relief judge on these issues.

02/16th . 2014



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 2290-5010
SC Bar #: 006188

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Mary Jane Harter 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 October 16 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Reply to Return to 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

Mary Jane Harter

before me this 16th day

of October, 2014.

C. Rauch Wise (L.S.)

Notary Public for South Carolina

My Commission expires: 12/07/2015

