

STATE OF SOUTH CAROLINA
In the Supreme Court

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OCT 23 2014

CERTIORARI TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001303

The State, Petitioner-Respondent,

vs

Nathaniel Charles Teamer, Respondent-Petitioner.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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Attorney for Respondent-Petitioner

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Strickland v. Washington, 466 U.S. 668 (1984) 2

Question I

Did the post conviction relief judge err in failing to find that the search of the automobile that resulted in the recovery of a cell phone was the result of an inventory search when the state failed to produce the procedure of inventory searches and no inventory was ever taken during the inventory search?

The State fails to recognize that trial counsel admitted that he failed to preserve for appellate purposes the issue of the legality of the search. The appellate counsel likewise did not believe the issue was preserved and submitted an *Anders* brief. At the Post conviction relief hearing, trial counsel testified he failed to renew his objection to the introducing of the cell phone and records obtained from the cell phone. App. at 878, 11 1-4.

When trial counsel fails to object to the introduction of evidence improperly seized, trial counsel is not effective in representing a defendant. The issue here is more than the mere failure of trial counsel to obtain a copy of the inventory policy. The error is a failure to object to the admission of the evidence. As the appellate courts have frequently held, a motion *in limine* is not a final ruling on the admissibility of the evidence. Another objection must be made when the evidence is actually introduced. As our Supreme Court has said “Generally, a motion in limine is not a final determination; a contemporaneous objection must be made when the evidence is introduced.” *State v. Wiles*, 383 S.C. 151, 156, 679 S.E.2d 172, 175 (2009).

Post conviction relief counsel simply made the issue more compelling when she raised the point of the failure to obtain the policy concerning the inventory search. Trial counsel admitted that having the inventory would have been helpful, but even with the inventory search policy, counsel would still have been ineffective when he failed to object to the introduction of

the phone records that were obtained from the illegally seized cell phones.

The only means of upholding the finding of the Post Conviction Relief judge is for this court to hold that the mere testimony by an officer that a search was an “inventory” search makes the seized evidence admissible. No court has so held and the reason is simple: Such a ruling is not a proper statement of the law. Under the facts established at the trial and at the Post Conviction Relief hearing, there is no factual basis to sustain the search in this case as an “inventory” search.

Question II

Did the Post Conviction Relief Judge err in finding that applicant was not prejudiced when trial counsel failed to object to the introduction of the marijuana found in the automobile driven by the applicant when the marijuana had no probative value for the charges against the applicant?

The marijuana found in the car was not relevant to any issue involved in this trial. The evidence was prejudicial to Mr. Teamer. The State contends that the Post Conviction Relief judge had support in the record as to the probative value of the marijuana. But the state has not suggested as to what issue in the murder and assault and battery with intent to kill charge the marijuana was relevant to prove.

When trial counsel fails to object to prejudicial evidence which is not relevant to any of the charges against the defendant, trial counsel is not effective. The first prong of *Strickland v. Washington*, 466 U.S. 668 (1984) is established. When evidence of drug use is introduced against a defendant in a virtually totally circumstantial evidence case, prejudice must be presumed. Surely the state did not seek to introduce the marijuana because it would have no

influence on the jury. To the contrary, the state sought to introduce marijuana to advance its case. They sought to portray Mr. Teamer as a drug user. Because trial counsel failed to object, the state was successful in that goal.

Question III

Did the post conviction relief judge err in failing to find that trial counsel was ineffective because he failed to call witnesses who could have established that the circumstances under which fellow inmates had access to the cell of another inmate made the testimony of Kevin McKinney less likely to have occurred?

The Post Conviction Relief judge did not, as the state contends, find defense counsel more credible. The PCR judge accepted defense counsel's trial strategy, but never stated what the trial strategy was. As stated in the opening brief in this matter, the testimony of Ms. Spiller and Mr. Humphries was relevant to the issue of whether Mr. McKinney could have had a conversation with Mr. Teamer.

Of all the witnesses who testified against Mr. Teamer, the testimony of Mr. McKinney was the most damaging. He testified as to a conversation he had with Mr. Teamer in which he claimed Mr. Teamer implicated himself in the murder. He also gave the jury a motive for Mr. Teamer to have committed the murder. If the jury failed to believe Mr. McKinney, the state's case would be significantly weakened. Mr. McKinney testified these alleged conversation occurred in November of 2006. App. at 248, ll 22-25 to 249, l 1.

Our Supreme Court has said "We have recognized that when counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)

But defense counsel must put forth the theory for trial strategy. Trial counsel never gave a reason for not calling Ms. Spiller, other than it would “open the door.” But we are only left to guess as to where that door would lead. His testimony that Mr. Humpheries was Mr. Teamer’s cell mate of a “brief time” ignores the fact that they roomed together for October, November and December of 2006. App. at 601, ll 7-13. November is when Mr. McKinney testified the alleged conversation took place. No one can seriously dispute the testimony of both witnesses and would have raised a question as to the reliability of Mr. McKinney.

In *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) the South Carolina Supreme Court held that the failure to call a nurse to impeach the credibility of the witness for the state that she was raped was sufficient to hold trial counsel was ineffective. This was true even though the nurse did not recall the incident and the impeaching evidence was in the nurse’s notes from the hospital visit. Had the testimony of Mr. McKinney been attacked with these two witnesses, a reasonable probability exists that a jury may have acquitted Mr. Teamer.

Question IV

Should this Court affirmed the decision of the Post Conviction Relief Judge under the cumulative error theory?

The Post Conviction Relief Judge did not have a need to rule upon this issues as he granted relief to Mr. Teamer on other grounds. As relief was granted on specific grounds, any such finding by the Post Conviction Relief judge would not have been necessary to his ruling.

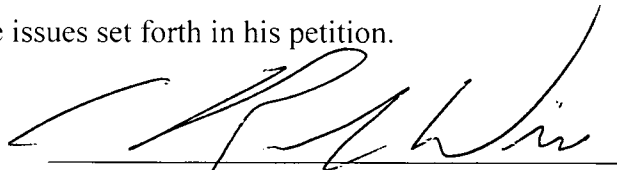
As the lower court granted Mr. Teamer a new trial, he had no need to ask the trial judge to reconsider the ruling and rule on a cumulative effect of the errors. Now that the State

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 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 set forth in his petition.

October 22, 2014



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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 assistant for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on October 22, 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



before me this 27th day

of October, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission expires: 12/7/2018

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S.C. Supreme Court

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Columbia, SC 29211

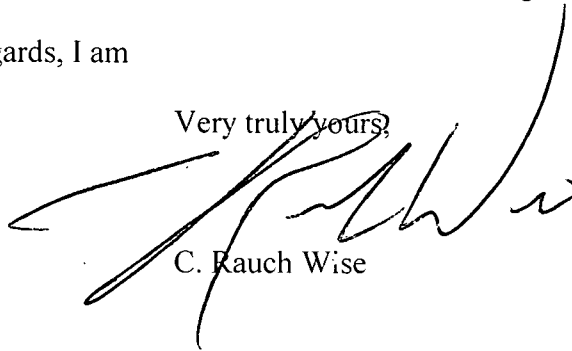
Re: State vs Nathaniel Charles Teamer (2013-001303)

Dear Mr. Shearouse:

Enclosed herewith is the original and six copies of the Reply to Return to 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,

A handwritten signature in black ink, appearing to read 'C. Rauch Wise', is written over the typed name. The signature is fluid and cursive.

C. Rauch Wise

CRW/mjh