

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable William Henry Seals, Jr.

Indictment Number 2009-GS-07-1279, 1293, & 1296
Appellate Case Number 2012-208487

The State,.....Respondent
v.

Jaquwn Brewer,.....Appellant

Published Opinion No. 27487
Heard April 1, 2014 - Filed January 28, 2015

PETITION FOR REHEARING

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S.C. SUPREME COURT

The Appellant respectfully petitions this Court for rehearing of the portion of the ruling in this case which finds the error harmless as to his convictions for Assault and Batter with intent to kill and Possession of a Weapon during a Violent Crime. This petition is based upon this Court's misapprehension of the facts of the case relating to this prejudice analysis. No further review is sought as to the rest of the opinion.

South Carolina law recognizes that harmless error analysis applies to the erroneous admission of hearsay testimony. State v Jennings, 716 SE2d 91 at 93 (SC 2011). However, while such error may be harmless, the prejudicial nature of error is dependent on the "circumstances of the case." State v Mitchell, 336 SE2d 150, at 151 (SC 1985).

Contrary to the opinion, the trial did not involve the testimony of many witnesses who were inside the club *and saw Mr. Brewer shoot Donald Parker*. In fact, not one witness testified that they saw Mr. Brewer shoot Mr. Parker; only that they saw him either with a gun or fire a gun. See ROA, p. 46, l. 6-9; p. 76, l. 11-20; p. 107, l. 21-24; p. 110, l. 3-11; p. 123, l. 22-25; p. 130, l. 25- p. 131, l. 5; p. 207, l. 6-14 & p. 218, l. 10-13.

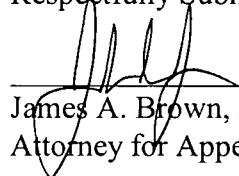
Also, the opinion indicates that there was only one shooter inside the Club but discounts the fact that another shooter shot towards the club. The opinion correctly emphasizes the significance of the second shooter during the prejudice analysis of the second shooting but does not reference this significance as to the first shooting.

Finally, both the majority opinion and dissenting opinion of Justice Beatty discuss burden shifting concerns which were not an issue before the Court on appeal. Nonetheless, the four justices who signed onto these two opinions raised concerns about the burden shifting. These burden shifting concerns are part of the "circumstances of the case." See generally State v Mitchell, 336 SE2d 150, at 151 (SC 1985)(quoted in the harmless error portion of the majority

opinion in the Appellant's case). the erroneously admitted evidence raised concerns about burden shifting. The justices concerns specifically involved the testimony that the Appellant could prove he was innocent of the shootings if he produced his gun. While the burden shifting issue is not the error being ruled upon, these concerns are part of the context of the case which should be considered during the prejudice analysis. In fact, Justice Beatty's dissent elevates this error to one which constitutes a structural defect in the trial. At a minimum, the fact the hearsay testimony was introduced contemporaneous with the burden shifting comments is a circumstance which must be considered in the harmless error analysis even if these comments are not properly before the court or arise to the level of a structural defect.

Therefore, the Appellant respectfully requests that this Court rehear the portion of the opinion regarding the prejudice analysis concerning the first shooting and reverse the Appellant's convictions for Assault and Battery with Intent to Kill and Possession of a Weapon during the Commission of a Violent Crime.

Respectfully Submitted,


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February 11, 2015

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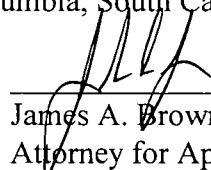
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PROOF OF SERVICE

Counsel for Jaquwn Brewer hereby certifies that he has prepared and served a copy of the Petition for Rehearing on this 11th day of February, 2015, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Donald J. Zelenka, South Carolina Office of the Attorney General, PO Box 11549, Columbia, South Carolina, 29211.

February 11th, 2015


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