THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014)

Appellate Case No: 2015-000227

State of South Carolina, ... Respondent,

v.

Richard Lanard Sprinkle, ... Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Court of Appeals properly concluded that any error committed by the trial court in excluding evidence regarding accomplice Sean Echols' expired plea negotiations was harmless because the trial court otherwise allowed meaningful cross-examination of Echols with adequate opportunity for impeachment, particularly where Echols' testimony was only a portion of the strong evidence of Petitioner's guilt.

STATEMENT OF THE CASE

Richard Lanard Sprinkle (Petitioner) was indicted at the October 8, 2012, term of the grand jury for Orangeburg County for two counts of armed robbery (R.p.350-354) and two counts of attempted murder (R.p.356-357). He was subsequently indicted at the February 4, 2013, term of the grand jury for burglary - first degree (R.p.359). Petitioner was represented by Jillian D. Ullman, Esquire, and Mark Wise, Esquire, of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Sarah A. Ford and B. Harrison Bell, Jr. (R.p.1). On April 8-10, 2013, Petitioner proceeded to trial by jury before the Honorable Edgar W. Dickson pursuant to which he was found guilty of first degree burglary, two counts of armed robbery, and one count of assault and battery in the first degree as a lesser included offense of attempted murder. He was sentenced to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; p.330, lines 1-13). Petitioner timely filed a notice of intent to appeal and his convictions and sentences were affirmed in an unpublished opinion from the Court of Appeals. State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014) (App.p.467-p.472). Petitioner submitted a timely Petition for Rehearing and by Order filed January 8, 2015, the Petition was denied. (App.p.476-p.487). On February 9, 2015, Petitioner submitted a Petition for a Writ of Certiorari to this Court and now this Return on behalf of Respondent (the State) follows.

STATEMENT OF FACTS

In the early morning hours of June 26, 2011, two men knocked on James Wright (Wright) and Robert Rumph's (Rumph's)[1] front door and asked if they could use the telephone. When Wright opened the door, the men produced a pistol and a knife and asked for money. The intruders struck Wright in the head with the pistol and cut Rumph with the knife while continuing to demand money. After assaulting Wright and Rumph, the men took cash and some clothing and left in Rumph's car. (R.p.93, line 22-p.94, line 15; p.106, line 11-p.111, line 7; p.136, line 8-p.140, line 23; p.145, lines 15-19). Wright testified he knew Petitioner before the incident and had actually talked to Petitioner the day before. (R.p.111, line 17-p.112, line 13). Rumph testified he knew Petitioner's accomplice, Sean Echols, before the incident because Rumph socialized with Echols' mother, Vivian, and had previously loaned money to Echols. (R.p.139, lines 2-13). During the subsequent investigation, Wright and Rumph were able to identify Petitioner and Echols as the assailants based on photo line-ups prepared by the police. (R.p.112, line 14-p.115, line 4; p.142, line 4-p.143, line 2).

Pretrial Motions

On April 8, 2012, the court held a hearing to address several pre-trial motions. First, the State asked the trial court to conduct a Neil v. Biggers[2] hearing regarding the reliability of the out-of-court identification of Petitioner and the admissibility of eyewitness identification testimony the State was considering offering at trial. After

[1] Rumph was also known by the nickname "Rocky" and was alternatively referred to as Rocky, Mr. Rock or Uncle Rocky by some witnesses.

[2] 409 U.S. 188 (1972).

hearing testimony and arguments, the trial court denied the motion to exclude the eyewitness identification evidence. (R.p.48, line 22-p.49, line 15).

Following a pre-trial Jackson v. Denno hearing, Petitioner next made a motion to require the State to disclose any deals made for the testimony of his accomplice Echols, either with the State or the federal government. He claimed Echols was charged federally with crimes unrelated to the State charges. The solicitor responded: "Your Honor, everything has been provided to the defense concerning the pending investigation federally against Mr. Echols. The State has also provided an expired plea offer to Mr. Echols. There have been no offers or negotiations or anything of that nature concerning Mr. Echols' testimony in this case, Your Honor." (R.p.50, line15- p.51, line 20). The State then made a motion in limine to exclude any effort to question Echols about the pending federal investigation, noting there had been no conviction, or even a federal charge. The trial judge took the matter under advisement. (R.p.54, line 23-p.57, line 9).

The following morning the case was called for trial, the jury was selected, and the court gave preliminary instructions before excusing the jury panel and ruling on outstanding pretrial matters. (R.p.58, line 1-p.85, line 8). The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found such evidence was inadmissible under the South Carolina Rules of Evidence, specifically Rule 608(b), because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would

run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14). Ultimately, the jury was sworn and the case proceeded to trial. (R.p.90, lines 5-13).

Trial

During opening statements, Petitioner's counsel reminded the jury that it was their job to determine whether any of Wright's trial testimony was true. (R.p.102, line 13-p.103, line 1). The State then called Wright to the stand to describe the armed robbery and assault. He repeated his previous in camera testimony that on the night of the incident two black men, one with long hair and one with short hair, knocked on his door. When Wright went to the door, they asked about Rumph and said they wanted to make a phone call. Rumph told Wright it was okay to let them in, but when Wright opened the door one of the men pointed a pistol at his chest and grabbed him around the neck. (R.p.105, line 22-p.108, line 21). Wright made an in-court identification of Petitioner as the assailant with the pistol, without any objection from Petitioner. Wright testified he knew Petitioner as "Ricky" and recognized Petitioner because Wright saw him "walking the street" all the time. (R.p.108, line 23-p.109, line 12).

Wright testified that one man went down the hall to Rumph's room while the other man forced Wright to his room, demanded money, and made Wright pull up his mattress. Wright was bleeding because he had been hit in the head with the pistol. The man then walked Wright to Rumph's room, where the other man cut Rumph with a knife to get Rumph to open his closet and give up his "pocketbook." The two men then took Rumph's car and left. Wright testified he talked to Petitioner at Bojangles the evening before the Sunday morning robbery, and then he made a second in-court identification of Petitioner. Petitioner again failed to object. (R.p.109, line 13-p.112, line 13). Next,

Wright described the photo lineup procedure and his out-of-court identification of Petitioner, and he made a third in-court identification of Petitioner without objection. He also described a separate photo lineup where he identified Echols as the second robber. (R.p.112, line 14-p.115, line 14; R.p. 334-335). On cross-examination, Wright explained that the intruders had a gun and a knife, but he wasn't sure whether Petitioner or the other man had the knife after they were all in Rumph's room, because Wright was bleeding and wiping blood from his face as a result of having been hit with the pistol. (R.p.121, lines 9-21). He later said Rumph had already been cut when they entered his room, and he did not actually see Rumph getting cut. (R.p.127, lines 1-23).

The State then called Rumph to the stand. On the night of the incident, Rumph was in bed asleep when Wright came to his room to say two men were at the door who wanted to use the phone. One of the men referred to Rumph as "uncle" and Rumph told Wright to let them in. Shortly thereafter, a man entered Rumph's room, pointed a gun at him, and demanded money. Rumph directed the intruder to some cash that was on his dresser, but the man demanded more money and said: "Don't make me kill you over this little bit of money." Wright and a second intruder with short hair then entered Rumph's bedroom. Rumph testified the man with longer hair, or "dreads" was the one who was already in his room. He claimed the man with the dreads then cut him with a knife. Rumph explained that when the man with the dreads first entered the bedroom he had the pistol, but then he and the man with the shorter hair traded weapons, and the man with the dreads cut him with the knife while the man with shorter hair said: "Make him talk." (R.p.135, line 25-p.139, line 2).

Rumph identified the intruder with short hair as "Vivian's son" and testified he already knew him because Rumph and his mother were "socializing together." Rumph testified the man with the dreads started cutting him on his stomach, leg, arm and foot. As the intruders left the house with Rumph's money, pants, and a hat, the man with short hair told Rumph: "don't you never disrespect my mama because I will be back." The two men then left in Rumph's car. (R.p.139, line 2-p.140, line 23). Rumph identified State's Exhibit Numbers Four, Five, Six, Seven, and Eights as photographs of his injuries. He also identified State's Exhibit Number Three as a photo line-up by which he made an out-of-court identification of Echols as the man with short hair. Rumph explained there were two intruders, one with short hair whom he knew, and one with dreadlocks whom he didn't know, but that they both participated in stealing his pants, his car, his money, and his hat. (R.p.141, line 6-p.143, line 19; State's Exhibit #3).

Next, Deputy David McRoy of the Orangeburg County Sheriff's Department testified on behalf of the State. McRoy was working road patrol on June 26, 2011. At approximately two o'clock in the morning he responded to the scene of the robbery. He described one victim as having cuts on his chest, left foot, and forearm, and the other victim having a big gash on top of his head. (R.p.159, line 10-p.161, line 13).

The State then called Investigator Garrison to describe her investigation of the assault and robbery of Wright and Rumph. She described the injuries received by both victims and identified several photos of those injuries, each of which was introduced into evidence without objection. (R.p.167, line 1-p.174, line 5; p.186, lines 8-12; R.p.337-345). Garrison testified she talked to both victims about the incident. Wright stated he knew one of the subjects from a local place called the Corner Pocket and that his name

was "Rick" or "Ricky," and Rumph stated the other subject was Sean Echols, the son of a lady he was seeing. Garrison went on to describe the preparation of the photo line-ups and the out-of-court identifications Wright made of both Petitioner and Echols (R.p. 334-335), and the out-of-court identification Rumph made of Echols (R.p.336). Each of the three photo line-ups was introduced into evidence with "no objection" from Petitioner. (R.p.174, line 7-p.180, line 23).

Next, Investigators Johnny Thrower and John Stokes testified in regard to an oral statement Petitioner made to them after his arrest. Petitioner made several requests to talk to Thrower, so Thrower and Stokes eventually agreed to meet with Petitioner. At the meeting, Petitioner told the investigators about a home invasion he participated in with Echols. Petitioner claimed he went to the residence with Echols and Echols' mother, but after they got inside, Echols started assaulting a guy, at which point Petitioner got scared and ran out of the house. (R.p.186, line 24-p.202, line 9).

Finally, the State called co-defendant Sean Echols to the stand. Echols testified he originally was to planning to commit a quick robbery by himself, but then sought help from his friends Collins Shuler and Jasper Clark, who also brought Petitioner into the picture. He said he and Petitioner specifically planned the robbery of Wright and Rumph because the victims ran a gambling house and would have money. Echols said he and Petitioner talked about how they would commit the robbery, how they would get away, and the specific roles each would play in committing the crime. Echols already knew Rumph because Rumph was "affiliated" with his mother. He repeated his claim that he and Petitioner planned the robbery. (R.p.203, line 17-p.206, line 25).

Echols then described the entire incident in great detail. Shuler and Clark dropped Petitioner and Echols a few streets away from the victims' house. Petitioner and Echols walked through a field and then approached the door of the residence. Echols knocked and when Wright came to the door Echols told Wright he needed to use the phone because he had been in a fight with his wife and needed to call his mother to pick him up. Echols testified this claim was a lie in order to gain entry into the house. Wright walked away but returned with a cordless phone and told Echols and Petitioner to "come in." (R.p.207, line 1-p.209, line 3).

According to Echols, when they entered the house Petitioner had a gun and Echols had a knife. Petitioner pointed the gun to Wright's head and told him not to move and then walked to Rumph's room while Echols escorted Wright to Wright's room. Echols asked Wright for money, took a few bills from his wallet, and flipped up Wright's mattress to look for more money when he heard Petitioner call for him to come to Rumph's room. When Echols and Wright got to Rumph's room, Petitioner handed Echols two handfuls of cash and asked Echols for the knife. They traded weapons and Petitioner began to cut Rumph with the knife while demanding more money. Eventually, Rumph admitted there was more money in the closet. Petitioner opened the closet and retrieved the money while Echols asked for Rumph's car keys. Echols took a pair of pants and a hat from Rumph's room and used the pants to open the back door without leaving fingerprints. Petitioner and Echols then drove Rumph's car to the end of the street, got out, and called Clark to come pick them up. Echols testified he and Petitioner beat, stabbed, and robbed Wright and Rumph, and that they planned the robbery. (R.p.209, line 3-p.212, line 8).

Next, Echols testified he had not been offered or promised anything in exchange for his testimony. He said he was testifying because he did it, got caught, and was hoping the court would have mercy on him. (R.p.212, line 14-p.213, line 4). Echols then testified Petitioner had dreads the night of the robbery and reviewed State's Exhibit #1. He said photo number 2 was an accurate picture of what Petitioner looked like at the time of the robbery. Echols admitted he hit Wright in the head twice with the gun and punched him in the mouth, causing Wright to bleed. (R.p.212, line 13-p.214, line 7).

Before Petitioner began his cross-examination, the solicitor advised the court he had a matter to take up outside of the presence of the jury. The jury was excused, and the State renewed its motion to prohibit any questions about the federal investigation involving Echols. After hearing a proffer of the questions and arguments from the parties, trial court ruled: "Well, it may not be - - and I understand the distinction that you're attempting to make but he has invoked his Fifth Amendment rights. And I'm going to go along with the ruling I made earlier. You're not going to be able to question him on that." (R.p.214, line 17-p.217, line 16).

Next, the State made a motion to prohibit Petitioner from cross-examining Echols in regard to his prior convictions for assault and battery with intent to kill and second-degree burglary. The solicitor argued that under Rule 609(a)(1), SCRE, any probative value was outweighed by undue prejudice. The trial court disagreed and ruled it would allow Petitioner to ask Echols about the prior convictions. (R.p.218, line 2-p.219, line 21). The jury returned to the courtroom and Petitioner began his cross-examination of Echols. Echols testified Petitioner did not do anything to Wright and repeated his claim that he was the one who hit Wright with the pistol. (R.p.220, line 5-p.224, line 10).

Echols then acknowledged that in a statement given to the police during the investigation he said there were three people involved in the robbery but that the other "dude" or "third person" involved: (1) was just standing there, (2) did not engage in any planning of the robbery, (3) did not have a weapon, (4) did not get any of the money stolen, (5) was innocent, (6) was merely present, and (7) didn't know what was happening until it happened. Echols, however, testified this claim about an innocent third party was a lie and that once he learned Petitioner was trying to place all of the blame on him, he came forward to give the truth. (R.p.226, line 3-p.231, line 22).

Evidence Regarding Plea Negotiations

Petitioner then began questioning Echols about the charges he was facing for his participation in the robbery. He admitted he had not been indicted for first-degree burglary but denied knowing Petitioner had been so indicted, for what Echols acknowledged was a "very serious crime." The State objected to the questions about first-degree burglary on grounds they were not relevant. The trial court initially sustained the objection and then sent the jury out to hear arguments after Petitioner drew the judge's attention to State v. Mizzell.[3] After hearing Petitioner's argument in regard to Mizzell, and a brief discussion in chambers, the trial court asked counsel for Petitioner to describe any additional areas of cross-examination he wished to explore and to explain why he believed they were appropriate. Petitioner's counsel advised he wanted to cross-examine Echols on three points, all of which would assist the jury in making a determination about Echols credibility. First, he wanted to ask Echols if he had sought a ten year sentence during plea negotiations with the State. Second, he wanted to ask Echols if he was in fact given an offer of a cap of twenty years during plea negotiations

[3] 349 S.C. 326, 563 S.E.2d 315 (2002).

with the State. Third, he wanted to ask Echols if he is a member of the Folk Nation gang. The solicitor responded that she believed Petitioner's first and second requests were inadmissible pursuant to Rule 410, SCRE, because they were part of Echols' plea negotiations, and the third request was inadmissible pursuant to Rules 404 and 405, SCRE, because it was evidence of other crimes, wrongs, or acts. (R.p.231, line 23-p.240, line 14).

The trial court ruled as follows:

> The first thing, right before we took a break I had sustained your objection to his question about whether or not he could ask him about the possible life sentence. And Mr. Wise was kind enough to give me the Mizzell case so I'm going to correct my ruling.
>
> I'm going to overturn the objection. He is allowed to ask him about the maximum sentence he could be facing under that. Okay?
>
> With regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that was given or not, all of that is part of plea negotiations and we're not going to get into that at all.
>
> With regard to whether or not he was in a gang or not in a gang however, whether he - - it doesn't matter to me how he's going to ask it, we're not going to get into that. I think it's character. Doesn't have anything to do with his truthfulness or untruthfulness. So whether I think it's a bad act that he's in a gang or not, we're not getting into it in this trial.
>
> Okay? All right.

(R.p.240, line 15-p.241, line 9). Cross-examination resumed, and Petitioner questioned Echols about not having been indicted for first-degree burglary. He acknowledged first-degree burglary would have carried a sentence of life without the possibility of parole. Petitioner also questioned Echols about his prior convictions for burglary and assault and battery with intent to kill. (R.p.243, line 11-p.244, line 20). Upon completion of Echols testimony, the State rested. (R.p.248, lines 20-23).

Closing Arguments, Jury Charge, and Verdict

After the trial court denied Petitioner's motion for a directed verdict, the parties made closing arguments. Petitioner's counsel reminded the jury of the weaknesses of Wright's identification by pointing out the inconsistency between the initial police report of two "unknown" assailants and Wright's subsequent claim that he knew Petitioner prior to the incident. Counsel also noted the discrepancy between Wright's original description of Petitioner as having dark skin and the appearance of Petitioner's skin during trial. Next, counsel attacked the reliability of Wright's identification where he was presented with multiple photo line-ups and he noted the seemingly inconsistent testimony from Wright, Rumph, and Echols about Petitioner's participation in the crimes. (R.p.271, line 21-p.293, line 7).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, direct evidence, circumstantial evidence, credibility of witnesses, criminal intent, accomplice liability, and mere presence. (R.p.294, line 6-p.307, line 15).

At the end of trial, the jury found Petitioner guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery as a lesser included offense of attempted murder in regard to Rumph. Petitioner was acquitted of any assault in regard to Wright. Petitioner made a motion for a new trial, arguing there was no evidence of great bodily injury to Rumph which would support the conviction for assault and battery in the first degree. The trial court denied the motion and sentenced Petitioner to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years'

concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; R.p.330, lines 1-13). (R.p.321, line 9-p.326, line 24).

CERTIORARI

Petitioner argues this Court should grant certiorari because the limitation on his cross-examination of Echols violated his constitutional rights and could not have been harmless beyond a reasonable doubt because Echols "was the only witness who provided evidence to support the conviction of burglary." He contends "it cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome." The State disagrees and submits the Court of Appeals conducted a well-reasoned analysis of the trial court's error regarding the cross-examination of Echols in the context of the entire case before correctly concluding that error was harmless. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of applying existing precedent to the particular facts and circumstances of Petitioner's case. Although the Court of Appeals found the trial court erred by excluding evidence regarding Echols' plea negotiations, it properly held: "the error was harmless" because "the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment, such that the jury had sufficient evidence before it to judge Echols' credibility." Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

The Court of Appeals properly concluded that any error committed by the trial court in excluding evidence regarding accomplice Sean Echols' expired plea negotiations was harmless because the trial court otherwise allowed meaningful cross-examination of Echols with adequate opportunity for impeachment, particularly where Echols' testimony was only a portion of the strong evidence of Petitioner's guilt.

On appeal to the Court of Appeals, Petitioner argued the trial court erred in limiting his cross-examination of State's witness Sean Echols. Specifically, he argued the trial court improperly prohibited him from asking Echols: (1) whether he was "under investigation" or "charged" in a federal case involving the shooting of a corrections officer, and (2) whether during plea negotiations he sought a ten year sentence and had been offered a "cap" of twenty years. The State responded by arguing the trial court appropriately exercised its discretion to impose reasonable limits on Petitioner's cross-examination of Echols where both the federal investigation and the plea negotiations were not relevant to Echols' testimony at Petitioner's trial, were likely to confuse the issues, and would not demonstrate a prototypical form of bias on the part of Echols. In addition, the State argued that any error in limiting Petitioner's cross-examination of Echols was harmless in light of: (1) the existence of evidence corroborating Echols' testimony on material points, (2) the extent of the cross-examination Petitioner was permitted to conduct, and (3) the overall strength of the State's case. Ultimately, the Court of Appeals found the trial court erred by excluding evidence regarding Echols' plea negotiations, but held the error was harmless because the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment. This harmless error holding is supported by the record and should be affirmed.

Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679, 680 (1986)). The Mizzell court highlighted the competing concerns with regard to certain witnesses: The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability

of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence. Id. at 331-32, 563 S.E.2d at 318. In State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012), our supreme court revisited limitations on the scope of cross-examination in light of the Confrontation Clause and concluded: "The fact that a cooperating witness avoided a mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury." Gracely, 399 S.C. at 374-75, 731 S.E.2d at 886. "It is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence. The fact remains that Petitioner was unable to fully develop this information through the cross-examination . . . ." Id. at 375 n.4, 731 S.E.2d at 886 n.4.

Effectiveness of Cross-Examination

On appeal to the Court of Appeals, Petitioner acknowledged he was allowed to fully cross-examine Echols about both: (1) his prior convictions for burglary and assault and battery with intent to kill; and (2) the maximum sentence he would have faced for his conduct in this case, including the possible life without the possibility of parole (LWOP) sentence he avoided by not being indicted for first degree burglary. Petitioner, however, maintained the limitations imposed by the trial court in regard to the pending federal investigation and the plea negotiations with the State nonetheless violated his Sixth Amendment Rights. Although the Court of Appeals agreed in regard to the plea negotiations, it recognized that: "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at

450, 602 S.E.2d at 71 (emphasis added). Here, the trial court did not interfere with Petitioner's opportunity for effective cross-examination of Echols, therefore, any error in the limitation on that cross-examination was harmless. In Gracely our supreme court acknowledged "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." Id. at 375, 731 S.E.2d at 886. Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross[-] examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case. Id. (quoting Van Arsdall, 475 U.S. at 684 (emphasis added in Gracely)).

The purpose of Rule 608(c), SCRE, is that a defendant be allowed to explore any "bias, prejudice, or other motive to misrepresent" such that the jury gets a clear picture of a witness with which to judge his or her credibility. Cross-examination is the tool used to highlight any biases that may exist. Here, the trial court allowed a meaningful cross-examination with numerous opportunities for impeachment, including specifically allowing Petitioner to inquire into whether Echols believed he would get some sort of leniency in exchange for testifying. Echols admitted he was not indicted for first degree burglary and was avoiding an LWOP sentence, but testified he had not yet been given any deals or plea bargains in exchange for his testimony. Just as the Court pointed out in Mizzell, this particular testimony was highly probative of bias because the jury could have inferred that Echols would be

more likely "to engage in biased testimony in order to obtain a future recommendation for leniency." Mizzell at 332-33, 563 S.E.2d at 318. The additional cross-examination sought by Petitioner would at best have been marginally relevant and would create no likelihood of changing the outcome of the trial. The Court of Appeals properly recognized that, given the extent to which Echols' credibility was already challenged, any impact of further cross-examination would have been insignificant.

Overall Strength of Case

In regard to overall strength, Petitioner argues Echols' testimony was an essential part of the State's case and that without his testimony the State had no evidence that Petitioner helped plan the crime, and no evidence to show intent to commit a crime. Petitioner contends Echols was the "only witness who provided evidence to support the conviction for burglary" which means he "provided the only evidence to support the conviction carrying the heftiest sentence." Although Echols accomplice testimony was important, it was only a portion of the strong evidence against Petitioner. Indeed, Petitioner's argument seems to disregard eyewitness testimony from the Wright and Rumph.

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either . . . the entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311 (2003). "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." S.C. Code Ann. § 16-11-310 (2003). Although the intent to

commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling. State v. Pinckney, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000). It is well-established in South Carolina that a conviction can stand upon the uncorroborated testimony of an accomplice. See State v. Taylor, 255 S.C. 147, 149-150, 177 S.E.2d 550, 551 (1970).

Here, Petitioner's conviction did not stand upon the uncorroborated testimony of Echols. Instead, Echols' testimony was largely corroborated by the eyewitness identification testimony from Wright proving Petitioner was an active participant in all of the crimes. At trial, the State presented testimony from Wright describing the armed robbery and assault. Wright explained how the two assailants convinced him to let them enter the house before the assault and robbery. He made several in-court identifications of Petitioner as one of the intruders and participants in the crimes. (R.p.105, line 22-p.115, line 14). Rumph also described the armed robbery and assault and identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19). Wright's testimony alone supports Petitioner's conviction for first degree burglary because the jury was free to base its determination of Petitioner's intent on evidence of his actions once inside the dwelling. Pinckney, supra. But Wright's testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Echols. It was also corroborated in part by Petitioner's statement to the police wherein he admitted he was at the scene of the crimes. As noted by this Court, "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses

cannot be harmless." Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Here, the case was not built on circumstantial evidence and Echols' testimony alone. Petitioner suffered no unfair prejudice as a result of the limitations placed on his cross-examination of Echols concerning the plea negotiations. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Thus, any error committed by the trial court was harmless beyond a reasonable doubt.

Several of the cases referenced by Petitioner in support of his claim to the contrary can be distinguished from Petitioner's case precisely because they lack any other strong evidence of guilt. For example, in Cruz v. State, 437 So.2d 692, 697 (Fla. Ct. App. 1983), disapproved on other grounds by Edwards v. State, 548 So.2d 656 (Fla. 1989), the appellate court found the trial court erred in unduly restricting Cruz's right of cross-examination of the state's key witness Smith and reversed the conviction. However, the court noted: "The other evidence admitted against Cruz and his accomplice Gilley was highly circumstantial. Smith was in fact the only witness who gave testimony against the Petitioner relating to the offense of conspiracy to commit robbery with a firearm." Similarly, in Fannin v. State, 581 So.2d 974, 976 (Fla. Ct. App. 1991), the appellate court held the trial court unduly restricted Fannin's right to cross-examine state's key witness Oliver, requiring reversal. Yet, the court commented: "The arresting officers never observed Petitioner in actual possession of the cocaine and no fingerprints were found on the cocaine located in the sink. Gwen Oliver was in fact the only witness who gave testimony directly connecting Petitioner to the cocaine." In State v. Clark, 364 S.W.3d 540, 545 (Mo. 2012), the appellate court found error in the limited cross-examination of a key State's witness but highlighted

that there was "no physical evidence" linking Clark to the crime and that the State's case relied upon testimony from a second witness whose testimony suffered from his own serious credibility problems. Finally, in Keys v. State, 739 So.2d 455, 459 (Miss. Ct. App. 1999), the appellate court found the trial court committed reversible error in prohibiting impeachment of a State's key witness with statements made during plea negotiations; however, the court noted "he was the only eyewitness in this case."

The facts in these cases are vastly different from the facts regarding Petitioner. Thus, in addition to properly finding harmless error due to the opportunity for meaningful cross-examination, the Court of Appeals decision is supported by the overall strength of the evidence in the State's case. For all of these reasons, the Court of Appeals properly affirmed Petitioner's convictions and sentence.

CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
March 11, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. filed December 23, 2014)

Appellate Case No: 2015-000227

State of South Carolina, ... Respondent,

v.

Richard Lanard Sprinkle, ... Petitioner.

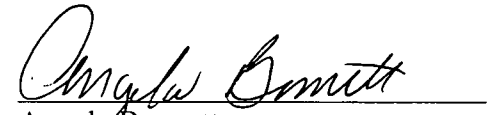
PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated March 11, 2015, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Tina Cundari, Esquire
Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, SC 29201

Robert M. Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 11th, day of March, 2015.



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MAR 11 2015
S.C. Supreme Court

March 11, 2015

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RE: The State, Respondent, v. Richard Lanard Sprinkle, Petitioner
Appellate Case No. 2015-000227

Dear Ms. Cundari and Mr. Dudek:

I am enclosing two (2) copies of the Return to Petition for a Writ of Certiorari in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Daniel E. Shearouse
(original and six copies enclosed)
Victim Services