

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Nathaniel Teamer, Respondent

MAY 12 2016

v.

S.C. SUPREME COURT

State of South Carolina, Petitioner

Appellate Case No 2013-001303

ON WRIT OF CERTIORARI

Appeal from Spartanburg County
Brooks P. Goldsmith, Post-Conviction Relief Judge

Memorandum Opinion No 2016-MO-013

Submitted October 15, 2015 - Filed April 13, 2016

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Nathaniel Teamer, the Respondent above named, hereby Petitions this Court to Rehear this matter based upon the following:

1. This Court erred in holding that trial counsel was not ineffective and Nathaniel Teamer was not prejudiced by his trial counsel's failure to request an instruction on third party guilt. This Court failed to recognize that since *Holmes v. South Carolina*, 547 U.S. 319 (2006) was decided, any reasonably, competent attorney, who defends those accused of a crime, should have known the importance of asserting a third party defense. In recognizing the importance of

that decision, trial counsel actually asked the trial court to assist him in his obligation to have a proper charge to the jury. Counsel was aware of the importance of the law on third party guilt as was demonstrated by his request for such a charge. Counsel likewise should have been aware of the need to instruct the jury on the theory of his defense. As noted in the Return to the Petition for Certiorari, since 1944 this Court has held that a defendant has the right to have the theory upon which he is defending the case, charged to the jury. *State v. Hewitt*, 205 S.C. 207, 31 S.E.2d 257 (1944). In this case trial counsel is not accused of suggesting a weak third party charge, but ignoring entirely his obligation to have a proper charge the Court could use to charge his theory of the case. The post conviction relief judge had evidence in the record from which he could conclude trial counsel was ineffective in not being prepared to submit such a charge to the trial court to submit to the jury. Unless this Court is prepared to hold such a charge is never proper, the finding of the post conviction relief judge is supported by the record. The finding of the post conviction relief judge is not devoid of all evidence. *Tate v. State*, 308 S.C. 163, 417 S.E.2d 553 (1992).

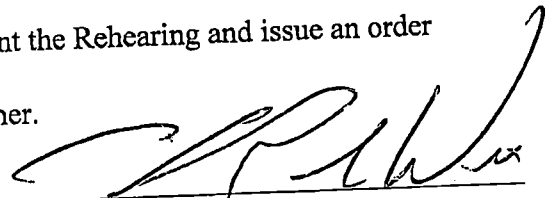
This Court further erred in concluding that Mr. Teamer has not shown the trial court would have erred in refusing such a charge. As noted above and in the Reply to the Petition for Writ of Certiorari, South Carolina has a long history of recognizing the right of a defendant to charge the theory of the defense to the jury. This Court failed to recognize that the United States Supreme Court in *Mathews v. United States*, 485 U.S. 58 (1988) held a defendant has the right to have his theory of the case charged to the jury. To deny a defendant his right to have his theory of the defense charged to the jury is to deny him due process under Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of

the United States of America.

2. This Court erred in finding that the post conviction relief judge was in essence requiring trial counsel to be "clairvoyant" in objecting to the charge by the trial judge as to "seek the truth." As noted in the Reply to the Petition for Writ of Certiorari, the principle of burden shifting charges had been known to defense counsel since 1979. *See, Sandstrom v. Montana*, 442 U.S. 510 (1979). In *State v. Daniel*, 401 S.C. 251, 737 S.E.2d 473 (2012) this Court did not reverse a prior decision nor establish new law. This Court simply applied the law as the law had always been. In *State v. Greene*, 338 S.C. 428, 527 S.E.2d 98 (2000) this Court granted post conviction relief and addressed an issue that had not previously been addressed in South Carolina. As this Court said "We have not previously addressed whether the probative value of a prior conviction, similar to the crime charged, not involving dishonesty or false statement, outweighs its prejudicial effect, where credibility is critical." *Id.* at 432, 527 S.E.2d at 100. No less a principle should be applied in this case. This Court did not deny relief in *Greene* on the ground that trial counsel should not have been required to be clairvoyant.

For the foregoing reasons, this Court should grant the Rehearing and issue an order affirming the granting of a new trial for Nathaniel Teamer.

May 11, 2016



C. Rauch Wise
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S.C. Bar No 06188

Attorney for Nathaniel Teamer

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The Honorable Brooks P. Goldsmith, Post-Conviction Relief Judge

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vs

The State, Petitioner.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham 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 May 11, 2016, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petition for Rehearing in the above case addressed to Alicia Olive, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina, 29211.

SWORN to and Subscribed

Sandy Traynham

before me this 11 day

of May, 2016.

Brooks P. Goldsmith (L.S.)
Notary Public for South Carolina
My Commission expires: 11/30/22