STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Honorable Frank R. Addy, Circuit Court Judge

Opinion No. 2016-UP-257 (S.C. Ct. App. Filed June 8, 2016)

06-GS-01-226 & 13-GS-01-255.

THE STATE,

RESPONDENT,

V.

JAMES SCOTT CROSS,

PETITIONER

APPELLATE CASE NO 2013-002596

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2016.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by ruling it was not an abuse of discretion for the trial court to refuse to bifurcate petitioner's trial so that the jury could first determine his guilt or innocence of the underlying criminal sexual offense charge, and then determine if he had the requisite prior sex conviction under the statute, since the Court's holding that bifurcation was not Constitutionally required did not address the discretionary issue on appeal that bifurcation was a readily available mechanism to provide petitioner a fair trial, and that it was an abuse of discretion to deny this most reasonable relief?

2.

Whether the Court of Appeals erred by finding no error in the trial court's ruling that the probative value of allowing the jury to learn of petitioner's prior sex offense outweighed its unduly prejudicial effect under Rule 403, SCRE, since the undue prejudice was easily avoidable in this case?

STATEMENT OF FACTS

Procedural history

Petitioner was indicted by the Abbeville County Grand Jury for the offense of criminal sexual conduct with a minor in the first degree, and committing a lewd act upon the same minor. R. p. 433 – R. 438.

Petitioner's case was called for trial on October 21, 2013 before the Honorable Frank R. Addy, Jr. and a jury. Josh Nasrollahi represented petitioner. C. Yates Brown and Shannon Odom were the assistant solicitors. R. 1.

On October 23, 2013 the jury found petitioner guilty on both counts. R. 420, ll. 1-8. Judge Addy sentenced petitioner to twenty-five years imprisonment for criminal sexual conduct in the first degree, and fifteen years imprisonment for committing a lewd act on a minor. R. 428, l. 15 – 429, l. 5.

The Court of Appeals affirmed petitioner's convictions in State v. James Scott Cross, 2016-UP-257 (filed June 8, 2016). App. 1-2. Petitioner filed for rehearing. App. 3-12. Rehearing was denied. App. 13.

ARGUMENT

1.

The Court of Appeals erred by ruling it was not an abuse of discretion for the trial court to refuse to bifurcate petitioner's trial so that the jury could first determine his guilt or innocence of the underlying criminal sexual offense charge, and then determine if he had the requisite prior sex conviction under the statute, since the Court's holding that bifurcation was not Constitutionally required did not address the discretionary issue on appeal that bifurcation was a readily available mechanism to provide petitioner a fair trial, and that it was an abuse of discretion to deny this most reasonable relief.

Introduction

Prior to trial, a lengthy in-camera hearing was held regarding available impeachment evidence due to the prior inconsistent statements of the alleged victim. The alleged victim was twenty-one years old at the time of trial, and she was thirteen years old in 2005 when the purported sexual abuse happened. R. 3, ll. 2-22. The alleged victim's allegation was that she was playing "hide and seek" with the adult petitioner, and some other children, when he forced himself on her in an open field outside of her Abbeville County home. R. 4, l. 2 – 8, l. 19.

Relevant facts

Petitioner moved to bifurcate the trial so that the jury could determine his guilt or innocence of the underlying sexual offense without learning of his prior conviction for criminal sexual conduct with a minor. The judge observed that: "I have not read [the facts of that conviction] to the jury yet and I may - - may simply let that go. But one of the elements in the indictment is that the Defendant is - - or has been convicted of CSC." R. 27, l. 14 – 28, l. 9.

The solicitor told the judge that petitioner "pled guilty to criminal sexual conduct with a minor in 1992." The solicitor further said the certified indictment was a self-authenticating document that could prove the prior sexual offense under the statute. R. 27, l. 14 – 28, l. 9.

The judge noted that the defense objected to the state offering the prior sex offense into evidence while petitioner's guilt on the underlying offense was at issue, and he correctly stated that the defense therefore moved to bifurcate the trial. R. 27, l. 14 – 28, l. 21.

Defense counsel stated he had moved to bifurcate the charge so that the merits of the underlying criminal sexual conduct offense was tried before the jury first. If petitioner was convicted on the underlying charge then a short "second phase" before the jury would be held to determine whether petitioner had indeed been convicted of a prior requisite sexual offense, or was on the sexual offender registry as required by the statute. Defense counsel noted the extreme prejudice of the jury learning petitioner had a prior conviction for a sexual offense at the same time it was deliberating his guilt or innocence. It was "going to be **propensity evidence** as received by them." R. 28, l. 25 – 30, l. 15. (emphasis added).

Defense counsel also requested that if the judge denied the motion to bifurcate, that he conduct a Rule 403, SCRE analysis on the admissibility of underlying conviction. Counsel asked the judge to distinguish between Old Chief v. United States, 519 U.S. 172 (1997), where the Supreme Court prevented the risk of a conviction because the jury learned the defendant had been convicted in the past of a nearly identical crime, and the prejudice that occurs in first degree burglary cases because the "prior burglaries" element is proved at the same time as the underlying offense is being tried. R. 28, l. 22 – 32, l. 8. See State v. Hamilton, 327 S.C. 440, 448, 486 S.E.2d 512, 516, n. 4 (Ct. App. 1997) (Noting, however, that the Fourth Circuit Court of Appeals had held that an offer to stipulate to or to admit the prior conviction triggered an obligation of the District

Court to eliminate the name and nature of the offense from being heard by the jury. United States v. Poore, 594 F.2d 39, 40-43 (4th Cir. 1979))

Counsel also noted that the specific statute in this case referencing the prior conviction or sex offender registry status did not mandate that the state be allowed to put that conviction before the jury where other mechanisms were available to allow petitioner to have a fair trial such as bifurcation of the trial, or a stipulation to the prior conviction. R. 28, l. 22 – 32, l. 8.

The solicitor essentially argued that the state did not have to stipulate to the offense, and that it had the right to prove petitioner's prior sex conviction at the same time as the charge for which petitioner was on trial. R. 32, l. 9 – 35, l. 8. The solicitor also offered that he did not think the trial court had to conduct a Rule 403, SCRE analysis.

Defense counsel disagreed with that assertion. He argued if the judge was denying the bifurcation motion he still had to make a ruling that the probative value of the evidence of the prior conviction was not outweighed by its unduly prejudicial effect. The judge denied the bifurcation motion noting: "I don't see the need to bifurcate and I appreciate your position, however your objection is noted for the record." As to the Rule 403, SCRE objection, and the bifurcation motion, the judge stated he thought the jury was intelligent, and he essentially said that he thought it could follow a limiting instruction. R. 35, l. 5 – 37, l. 5.

The solicitor then said he planned to prove the element with "notice that he is given a certified conviction of criminal sexual conduct with a minor first degree as sufficient notice that he is on the sex offender registry." R. 38, ll. 9-12.

The judge later noted he had asked the solicitor to redact the indictment of the prior conviction from 1991 to remove the name of the minor child involved. R. 130, l. 25 – 131, l. 12.

When the solicitor moved the certified conviction from Anderson County of the prior criminal sexual conduct with a minor into evidence from March 9, 1992 defense counsel objected. R. 134, l. 1 – 135, l. 2. The judge then told the jury the only reason the prior criminal sexual conduct with a minor conviction evidence was being admitted was because it was "one of the elements of the underlying charge we are trying here today." R. 135, ll. 3-23.

The judge charged the jury that the state had to prove beyond a reasonable doubt that petitioner engaged in a sexual battery with the alleged victim on or about December 29, 2005. The judge also instructed "a person is guilty of criminal sexual conduct with a minor in the first degree if the person engages in a sexual battery with a person who is less than sixteen years of age and the actor **has been previously convicted or pled guilty to an offense listed in Section 23-3-430(c).** I instruct you that the crime of criminal sexual conduct with a minor in the first degree is a crime listed in Section 23-3-439(c)." R. 413, ll. 6-17. (emphasis added).

Discussion

S.C. Code §16-3-655 provides: (A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

> (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430 (C) *or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430 (D).*

The state cited Spencer v. Texas, 385 U.S. 554 (1967), in support of its argument that it was not a Due Process violation -- because of "collateral prejudice" -- for the state to introduce an indictment showing a conviction for a prior offense with a limiting instruction that such matters are not to be taken into account in assessing the defendant's guilt or innocence under the current indictment. The defense countered that the more current case of Old Chief v. United States, supra,

was instructive to show that the court had the power to prevent this prejudice to the defendant through means that are readily available.

The trial in this case occurred on October 21-23, 2013. The attorneys discussed the Court of Appeals unpublished opinion in State v. Welch, 2011-UP-503 (decided November 10, 2011) in arguing the bifurcation and Rule 403, SCRE issue. On appeal, petitioner also reminded the Court of Appeals that "A very similar issue is pending before this Court in State v. Marcus Greene. Final Brief of Respondent filed January 6, 2015." Brief at 8.

In State v. Marcus Greene, Appellate Case No. 2013-001976, then Circuit Court Judge Stephanie McDonald, while ruling on a Rule 403, SCRE objection, ordered Greene's trial on the elements of first-degree CSC with a minor bifurcated to prevent undue prejudice to Greene by allowing the jury **to first reach a verdict on the underlying indicted offense.** Second, if Greene was convicted of the indicted offense, a short bifurcated hearing would then be held to decide if Greene met the statutory element of already being obligated by law to have to register as a sex offender.

This was similar to the procedure widely used in first degree burglary cases prior to State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997), where the parties simply stipulated to the underlying prior burglaries or housebreaking convictions. If the jury convicted the defendant of burglary it had already been stipulated that the defendant was guilty of first degree burglary based on his prior convictions.

The state appealed Judge McDonald's bifurcation order in State v. Greene prior to trial. Unfortunately, Greene died while the issue was on appeal, and the Court of Appeals dismissed Greene's appeal by order dated October 22, 2015.

Under the identical procedure of Greene set forth by the defense in this case the state would address its evidence about petitioner allegedly molesting the minor during the first phase of the trial. If the jury found petitioner guilty of the underlying indicted sexual offense with a minor, there would then be a short additional hearing where the state would be allowed to prove to the jury that petitioner had the requisite prior sexual conviction or that he was on the Sex Offender Registry to cover that element of the offense. Regardless of how the determination of the prior requisite element was made after petitioner was found guilty of the indicted offense, the state would suffer absolutely no prejudice.

In State v. Jones, 234 Conn. 324, 662 A.2d 1199 (1995), the Supreme Court of Connecticut held that the trial court should have bifurcated that trial on a capital felony count so as to preclude admission of a prior murder conviction, and that the failure to do so required a new trial.

Similarly, the Utah Supreme Court determined, pursuant to its inherent supervisory power, that such a trial must be bifurcated. See State v. Florez, 777 P.2d 452 (Utah 1989). In State v. James, 767 P.2d 549 (Utah 1989), the Supreme Court of Utah also held that the appellate court had the inherent supervisory power over trial courts to adopt a bifurcated approach to an aggravated murder trial pursuant to Utah Code §76-5-202 (1)(h). The court held under that bifurcated approach the jury was not initially to be presented with evidence of the defendant's prior conviction. If the jury found the defendant guilty of an intentional and knowing killing, it would then be instructed on the prior conviction and deliberate on the existence or nonexistence of that prior conviction.

In Jackson v. State, 337 So.2d 1242 (Miss. 1976), the court held it had the inherent authority to bifurcate a death penalty trial into a guilt-finding phase and a sentence-determining phase.[1]

In Hines v. State, 794 N.E.2d 469 (Ind. 2004), the Court held it was an abuse of discretion to deny the defendant's motion for a bifurcated trial, and the failure to bifurcate the trial denied the defendant a fair and impartial trial where unlawful possession of a firearm by a serious violent felon was also a charge. See, also, Hines v. State, 801 N.E.2d 634 (Ind. 2004) (prosecutor should have accepted the defendant's proposed stipulation **or** the trial court should have bifurcated the trial); Monceaux v. State, 51 A.2d 474 (Del. 2012) (bifurcated trial did not violate *defendant's* due process rights).

In this case, as argued to the Court of Appeals, the trial judge abused his discretion by refusing to bifurcate the trial to protect petitioner from the extreme prejudice of the jury knowing he had a prior criminal sexual conduct conviction while not prejudicing the state one iota. If petitioner was convicted of the underlying offense, then the state could quickly prove the underlying conviction.

Court of Appeals

The Court of Appeals summarily dispatched of this important issue by citing Spencer v. Texas, 385 U.S. 554, 568-69 (1967), which held "the Fourteenth Amendment does not require states to hold bifurcated trials when the State admits evidence of prior crimes under a recidivist statute." App. 2.

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[1] Superseded by statute, recognized in Gray v. State, 351 So.2d 1342 (Miss. 1977).

Rehearing

Petitioner wrote on rehearing:

> This Court cited Spencer v. Texas, 385 U.S. 554 (2015) for the proposition that a bifurcated trial is not **required** where the defendant's prior record or status is an element of the offense to provide a defendant a fair trial not infected by the unfair prejudice of the jury learning of his prior criminal record or status. Spencer held, as this Court stated in the opinion in this case, that the Due Process Clause does **not require *states*** to hold bifurcated trials where the state admits evidence of a defendant's prior crimes under a recidivist statute. However, respect for matters of federalism *are not involved* in this case.
>
> One Judge presently on this Court -- as a Circuit Court Judge -- in Berkeley County ordered the relief petitioner requested in this case -- a bifurcated trial to ensure the defendant's due process right to a fair trial was protected by preventing the jury deciding his guilt or innocence from learning of his status as a sex offender or his prior record during **that stage** of the trial.
>
> Further, Spencer was decided in 1967, and the United States Supreme Court accepted the fact in that case, for example, that joint trials of co-defendants "[f]urnish inherent opportunities for unfairness," and that limiting instructions should literally limit the unfairness. Spencer v. Texas, 385 U.S. 554, 562 (1967). Bruton v. United States, 391 U.S. 123, (1968), was obviously decided in 1968, and some State Court Judges in this state thought State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014), signaled the end of joint trials altogether.
>
> Our Supreme Court in 1987 wrote: "We urge the state to carefully consider all the available alternatives before deciding to try co-defendants jointly, especially in a capital case. While we realize there will be circumstances in which a joint trial will be the best route to follow, the decision to pursue this route should be made only after giving due deliberation to the inherent problems, such as redacted statements, which arise from joint trials." State v. Bellamy, 293 S.C. 103, 106, 359 S.E.2d 63, 65 (1987).

App. 3-4.

Petitioner offered the following example if hypothetical crime on rehearing, and its practical application if a defendant's right to a fair trial is totally and unfairly delegated to the political branch of government:

> **Prior convictions or status being made an element of the crime**
>
> The more modern discussion is whether the legislature can constitutionally pass a statute, for example, of the crime of "aggravated violence." An element of this offense is that the defendant had three or more misdemeanor or felony convictions *or* committed prior bad acts which involved "disorderly conduct," or an "assault," or forced him to have the "duty to register as a status offender" of any kind, or to have his movements monitored by electronic or other device. (This would obviously cover registration as a sex offender, or being subject to GPS monitoring). These "elements" would all be alleged in the indictment. The state would not have to stipulate to any of the above since they were elements of the crime. See State v. Benton, 338 S.C. 151, 155, 526 S.E.2d 228, 230 (2000).
>
> The modern discussion, respectfully, is at **what point** do convictions or status offenses being made an element of the crime by the Legislature deny a defendant his due process right to a fair trial. Petitioner alleges it is at the point in this case where the jury learned of his prior conviction for criminal sexual conduct with a minor, or his status as a sex offender, where he was on trial for the same offense. This Court should grant rehearing since the remedy of ensuring petitioner his due process right to a fair trial by bifurcating the trial was readily apparent, and the trial judge respectfully rejected the well-reasoned argument in support of that argument in this case.

App. 4-5.

"[R]ules are made to secure justice, not defeat it." Gill v. State, 962 So.2d 552, 554 (Miss. 2007) *citing* Brewer v. Browning, 115 Miss. 358, 366, 76 So. 267 (1917). Defense counsel in this case moved to bifurcate the charge so that the underlying criminal sexual conduct offense was tried before the jury first. If petitioner was convicted on the underlying charge then a short "second phase" before the jury would be held to determine whether petitioner had indeed been

convicted of a prior requisite sexual offense, or was on the sexual offender registry as required by the statute. Defense counsel noted the extreme prejudice of the jury learning petitioner had a prior conviction for a sexual offense at the same time it was deliberating his guilt or innocence. It was "going to be **propensity evidence** as received by them." R. 28, l. 25 – 30, l. 15. (emphasis added).

The Court of Appeals erred by disposing of this case by citing Spencer v. Texas, 385 U.S. 554, 562 (1967) on what the Fourteenth Amendment mandates that the states do. That was not the abuse of discretion issue on appeal in this case.

Respectfully, this is a novel issue of public importance that this Court, as the highest Court in this state, should address. See Rule 242 (b)(1), SCACR. Collateral consequences of crimes are becoming more and more onerous such the stigma of some crimes never seems to dissipate. Now, those collateral consequences or prior convictions where the defendant has paid his debt to society seem to more and more be elements of other crimes. "[A]ll courts have the inherit power to correct and make judgments speak the truth." Turner v. State, 212 Miss. 590, 594, 55 So.2d 28 (1951). Propensity evidence is fundamentally unfair, and trial counsel correctly labeled the refusal to apply the remedy of bifurcation as ensuring just that – a fundamentally unfair trial. Certiorari respectfully should be granted on this matter.

2.

The Court of Appeals erred by finding no error in the trial court's ruling that the probative value of allowing the jury to learn of petitioner's prior sex offense outweighed its unduly prejudicial effect under Rule 403, SCRE, since the undue prejudice was easily avoidable in this case

Relevant Facts

Defense counsel correctly argued that the judge should not allow the state to introduce the evidence of the 1992 indictment wherein he was convicted of criminal sexual conduct with a minor because the probative value of this evidence was substantially outweighed by its danger of unfair prejudice. R. 430 - 432. The judge denied the Rule 403, SCRE motion ruling the state had the right to place petitioner's prior criminal sexual conduct conviction before the jury at the same time as he was being tried for the offense for which he was on trial.

Our Supreme Court has recognized the fundamental right to a fair trial. State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978). The Due Process Clause of the Fourteenth Amendment to the United States Constitution similarly guarantees the defendant the fundamental right to a fair trial. Estelle v. Williams, 425 U.S. 501 (1976); Duncan v. Louisiana, 391 U.S. 145 (1968); Chambers v. Mississippi, 410 U.S. 284 (1973).

Rule 403, SCRE provides where evidence is relevant it still "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. . . ." Unfair prejudice means an undue tendency to suggest a decision on an improper basis. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

Petitioner's remote 1992 conviction for criminal sexual conduct with a minor, beyond cavil, unduly prejudiced the jury in its determination of petitioner's guilt or innocence on the underlying charge.

Obviously, evidence of the 1992 conviction was not admissible under Rule 404(b), SCRE to "prove the character of a person in order to show action in conformity therewith." Moreover, prior convictions that are strikingly similar to the one the defendant is on trial for only exacerbate the danger of unfair prejudice. State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984).

The solicitor argued that the state had the right to place petitioner's prior criminal sexual conduct with a minor conviction before the jury as if it were a prior burglary under the burglary statute. See State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (1998). Respectfully, the legislature does not have the power to legislate and waive a defendant's right to a fair trial. There were reasonable alternative methods, as argued in Issue 1 supra, to insure petitioner had a fair trial while at the same time allowing the state to prove the element of the prior charge. The state sought to gratuitously prejudice petitioner to the maximum degree.

The Court of Appeals erred by summarily affirming the trial judge's Rule 403, SCRE ruling in this case which allowed the state to introduce the evidence of the prior CSC with a minor conviction at the same time his innocence or guilt on the underlying charge was being adjudicated. App. 2.

Rehearing

On rehearing, petitioner reminded the Court that:

> Counsel also noted that the specific statute in this case referencing the prior conviction or sex offender registry status did not mandate that the state be allowed to put that conviction before the jury where other mechanisms were available to allow petitioner to have a fair trial such as bifurcation of the trial, or a stipulation to the prior conviction. R. 28, l. 22 – 32, l. 8.
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> The solicitor essentially argued that the state did not have to stipulate to the offense, and that it had the right to prove petitioner's prior sex conviction at the same time as the charge for which petitioner was on trial. R. 32, l. 9 – 35, l. 8. The solicitor also offered that he did not think the trial court had to conduct a Rule 403, SCRE analysis.

> Defense counsel disagreed with that assertion. He argued if the judge was denying the bifurcation motion he still had to make a ruling that the probative value of the evidence of the prior conviction was not outweighed by its unduly prejudicial effect. The judge denied the bifurcation motion noting: "I don't see the need to bifurcate and I appreciate your position, however your objection is noted for the record." As to the Rule 403, SCRE objection, and the bifurcation motion, the judge stated he thought the jury was intelligent, and he essentially said that he thought it could follow a limiting instruction. R. 35, l. 5 – 37, l. 5.
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> When the solicitor moved the certified conviction from Anderson County of the prior criminal sexual conduct with a minor into evidence from March 9, 1992 defense counsel objected. R. 134, l. 1 – 135, l. 2. The judge then told the jury the only reason the prior criminal sexual conduct with a minor conviction evidence was being admitted was because it was "one of the elements of the underlying charge we are trying here today." R. 135, ll. 3-23.

App. 4-5.

Petitioner does not want to be repetitive with the case law cited in issue one but the issue here is not the great deference appellate courts give to trial court's Rule 403, SCRE – undue prejudice versus probative value rulings -- **but whether the simple statement that the trial court trusted "the jury" was an abdication** of the trial judge's duty to ensure petitioner received a fair trial in his Rule 403, SCRE analysis. This Court has recognized the fundamental right to a fair trial. State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978).

Finally, the errors in this case were not harmless. The alleged victim repeatedly admitted she did not tell the truth to the police at different times. Petitioner strongly denied he ever

played "hide and seek" with these children, and he denied raping or molesting the alleged victim while playing "hide and seek." R. 374, l. 22 – 383, l. 22.

The alleged victim acknowledged she did not disclose the criminal sexual conduct offense when it allegedly occurred in the field outside her home. R. 76, ll. 18-22. She repeatedly claimed she did not "recall" or "remember" important events about accusations of the criminal sexual conduct. R. 86, l. 12 – 88, l. 25. The alleged victim admitted she gave false statements that she had other times claimed were true against petitioner's brother, Andy, "where she also accused him of having sex with her." R. 104, l. 4 – 107, l. 2.

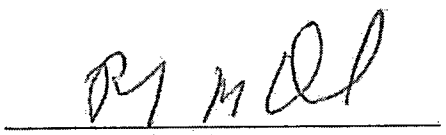
The alleged victim was in "self-contained" classes and was only able to finish the ninth grade although she was twenty-one years old at the time of trial. R. 63, ll. 6-24. It is clear she came from a very dysfunctional family, sexually and otherwise.

Certiorari should respectfully be granted on this issue as well.

CONCLUSION

By reason of the foregoing arguments, certiorari should be granted to allow full briefing on these issues.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
OCT 20 2016
SC Court of Appeals

Certiorari to Abbeville County
Honorable Frank R. Addy, Circuit Court Judge

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06-GS-01-226 & 13-GS-01-255.

THE STATE,

RESPONDENT,

V.

JAMES SCOTT CROSS,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and James Scott Cross, #185083, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 13th day of October, 2016.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day of October, 2016.

(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 20, 2016

Mark Farthing, Esquire
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. James Scott Cross

Dear Mr. ~~Farthing~~ Mark:

Enclosed are two copies of the Petition for Writ of Certiorari and the Appendix in the above case that I have filed with the South Carolina Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/ssd

Enclosures

cc: Court of Appeals