

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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JAN 26 2017

SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY  
Court of General Sessions  
Donald B. Hocker, Circuit Judge  
Appellate Case No. 2014-002322

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State of South Carolina..... Respondent,

v.

Curtis Brent Gorny..... Appellant.

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**Petition for Rehearing**

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Pursuant to Rules 221 and 240, SCACR, Appellant/Petitioner Curtis Brent Gorny files this Petition for Rehearing regarding this Court's decision in *State v. Gorny*, 2017-UP-037 (S.C. Ct. App. filed Jan. 11, 2017). The Court overlooked or misapprehended the following points in affirming the judgment below.

A. In denying the Change of Venue motion of the Appellant, the Court failed to recognize the constant viewing of the scene by the jury and failed to consider the following:

1. This trial proceeding in the Chesterfield County Courthouse created a jury view of the scene of the courthouse crime, and the relevant evidence without following statutory mandates of South Carolina Code §14-7-1320.

2. The Court failed to prevent unauthorized visits to the courthouse crime-scene. *Holy Cross v. Orkin Exterminating Co.*, 682 S.E.2d 489, 384 S.C. 441 (S.C. 2009).

3. By failing to move the trial, the court ensured that the jurors revisited the courthouse crime scene every day during the trial, repeatedly evoking an emotional response that likely led them to convict even if unconvinced that the government had satisfied its burden of proving each count beyond a reasonable doubt.

4. The victim, Olivia Weaver, testified “Were you scheduled to be in Court...February 2013? I was.” (R. p. 127, ll. 13-15). She went further discussing the Courthouse when she left the court hearing, stating “I was heading out the door...When I was walking out he was coming in and I looked at him and I clearly stated you’re late” (R. P. 129, ll. 8, 12-13). Even without evidence of actual bias, courts have presumed juror bias in other circumstances where there is too great a risk that jurors’ emotional involvement with an offense would affect their impartiality. *See, e.g., Tinsley v. Borg*, 895 F.2d 520, 528 (9th Cir.1990) (“Courts have been willing to presume bias where a juror or his close relatives have been personally involved in a situation involving a similar fact pattern.”)

5. The jurors were aware that the courtroom in which they sat was the same as the crime scene and that the building in which they entered every day of trial was the scene of the terrifying events. The record is void of any directions from the court regarding the crime scene.

6. The court did not instruct the jury to enter the courthouse from another entry way rather than the front courthouse entrance (this being the entrance that was the constant attention of the testimony and evidence). In this way, the jury walked across the crime scene every day.

7. Appellant’s trial took place in the same courthouse in which the shooting incident occurred.

8. The trial court erred by not touring the area and crime-scene before trial and neglecting to order specific measures to prevent jurors from improperly viewing the crime scene during the trial.

9. Routine and easy measures may include 1) using a courtroom in another part of the building (or town); 2) requiring jurors to enter and exit the courthouse through a different doorway; 3) curtaining off part of the lobby; and 4) stationing court personnel to ensure that jurors did not stray (into the designated crime-scene areas).

10. Finally, ordering and supervising the jury on a tour of the crime-scene under the court's supervision during the trial, would prevent curiosities and wandering. The State allowing a jury view and failing to comply with the statute is fundamental error. *Snyder v. Massachusetts* 291 U.S. 97, 122 (1934).

B. In denying the Change of Venue motion of the Appellant, the Court failed to consider the fundamental right of a fair and impartial jury with the overwhelming guilty of the accused.

1. This jury, sitting at the scene, creates “an unacceptable risk” of impermissible factors coming into play,” and such risk creates an environment of inherent prejudice which necessarily offends Defendant’s right to a fair trial. *Estelle v. Williams*, 425 U.S. 501, 504 -05 (1976). Simply providing a jury of twelve is not enough. The Court pointed out that the case has been “locally referred to as the ‘Courthouse Shooting’” (R. p. 58, ll. 13-14). Mark Funderburk, testified that he works “here at the courthouse” and attending to matters in General Sessions court. (R. p. 141, ll. p 15; R. p. 142 ll. 3-4). Timmy Knight heard and testified that “shots fired at the courthouse” over the radio from another officer, he “pulled up here at the courthouse. (R. p 209 ll. 2-4). (R. p. 221 ll. 8). Joey Carnes testified that all were alerted of a “call went out about the shooting incident at the courthouse” (R. p. 237, ll. 21-22).

2. A juror pointed out “my mother works for the treasurer’s office...I know what happened” (R. p. 59, ll. 2-4). Another juror pointed out “my co-worker’s daughter worked here at the courthouse and was in the parking lot during the shooting” (R. p. 61, ll. 20-22). The state must provide a panel of “Impartial, indifferent jurors. . . regardless of the heinousness of the

crime charged [or] the apparent guilt of the offender. . . . “ *Turner v. Louisiana*, 379 U.S. 466, 85 S.Ct. 546 (1965). Vicki Hallan pointed out that she was requested to assist the crime scene at the Chesterfield County Courthouse. (R. p. 251, ll. 4-5).

3. The court erred in finding no presumption of prejudice because holding the jury trial at the same courthouse where the shootings occurred is so inherently prejudicial that standard measures to minimize prejudice are unable to provide a fair trial. Cross examination from the solicitor points out “were you trying to enter the courthouse...were you trying to enter the courthouse while you had that gun on your person?” (R. p. 348 ll. 25; R. p. 349, ll. 1-2). Questioning of Witness, Jamie Gibson pointed out that he was at the “Courthouse” on “13th of February”; following up with the question of “did he remember the incident occurring that was very traumatic?”. Finally, he stated he was wondering “who’s shooting firecrackers at this courthouse.” (R. p. 132, ll 8, 11-12; R. p. 133, ll. 7).

## CONCLUSION

For the reasons stated this Court should grant this petition, withdraw its prior opinion, and issue a new opinion addressing the argument Petitioner made and reversing the judgment below.

Respectfully Submitted,

COCKRELL LAW FIRM, PC

By: 

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January 25, 2017  
Chesterfield, South Carolina

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IN THE COURT OF APPEALS

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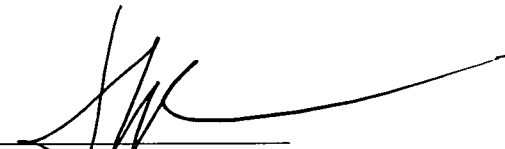
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**Proof of Service**

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The undersigned hereby certifies that on the date indicated below he served counsel of record with a copy of the Petition for Rehearing by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Alan M. Wilson  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

By:   
M.W.Cockrell, III, SC BAR # 69417  
**COCKRELL LAW FIRM, PC**

January 25, 2017



**COCKRELL**  
LAW FIRM, P.C.

M.W. Cockrell, III (SC)  
Sarah C. Campbell (SC)  
M.W. Cockrell, Jr. (TX)\*+

*\*of counsel*  
*+ Board Certified: Oil, Gas & Mineral Law*  
*Texas Board of Legal Specialization*

January 25, 2017

**RECEIVED**

**JAN 26 2017**

**SC Court of Appeals**

**VIA HAND DELIVERY**

The Honorable Jenny Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

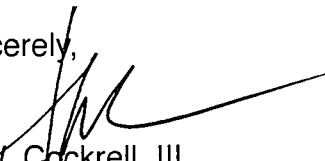
Re: State v. C. Gorney  
Case No.: 2014-002322

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the Petition for Rehearing in the above referenced case. I have also enclosed a proof of service of this document on counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



M.W. Cockrell, III  
MWC/ae

Enclosures

cc: Alan M. Wilson, Esquire