

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS
Appeal from Richland County
The Honorable L. Casey Manning, Circuit Court Judge

Opinion No. 5448 (S.C. Ct. App. filed October 26, 2016)

Appellate Case No. 2017-000055

Shanna Kranchick, #283147,
v.
State of South Carolina, Respondent.

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S.C. SUPREME COURT
Petitioner

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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PETITIONER'S QUESTION PRESENTED

Did the Court of Appeals err in reversing the PCR judge's grant of relief and finding that trial counsel was ineffective for failing to object when the forensic toxicologist testified beyond the scope of his expert qualification as to what effects the ingestion of marijuana and cold medicine would have upon a person?

STATEMENT OF THE CASE

Shanna Kranchick (“Kranchick” hereafter) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Kranchick was indicted during the March 2002 term of the Richland County Grand Jury for Felony DUI – Death Resulting (2002-GS-40-00894) and Felony DUI – Great Bodily Injury (2001-GS-40-0895). Kranchick was represented by Richland County Public Defenders Douglas Strickler, Esquire, Deborah Ahrens, Esquire, and Lauren Mobley, Esquire. On July 11-14, 2005, Kranchick proceeded to a jury trial before the Honorable Reginald I. Lloyd, where she was convicted as indicted.¹ Following her conviction, Judge Lloyd ordered a pre-sentencing investigation and deferred sentencing until a report was completed. On September 21, 2005, Judge Lloyd sentenced Kranchick to thirteen years imprisonment for Felony DUI – Death Resulting and to a consecutive fifteen years imprisonment suspended upon the service of five years’ probation for Felony DUI – Great Bodily Injury. Both sentences were to be served consecutively to Kranchick’s twelve year sentence for an unrelated Armed Robbery.²

Kranchick filed a timely notice of appeal. Following the submission of an Anders³ brief and Kranchick’s *pro se* brief, the South Carolina Court of Appeals dismissed the appeal by unpublished opinion. State v. Shanna M. Kranchick, 2008-UP-599 (Ct. App. file October 17, 2008). The Remittitur was sent on November 4, 2008.

Thereafter, Kranchick filed an application for post-conviction relief on January 14, 2009. The State filed its Return on June 29, 2009, requesting an evidentiary hearing be held. An evidentiary hearing was convened before the Honorable L. Casey Manning, on January 14, 2010. The State was represented by Assistant Attorney General Brian T. Petrano. Kranchick was

¹ Kranchick’s first jury trial resulted in a mistrial.

² (2001-GS-40-6280).

³ Anders v. California, 386 U.S. 738 (1967).

present and represented by Charlie J. Johnson, Jr., Esquire. Following the submission of proposed Orders from both parties, the post-conviction relief court granted Kranchick's application by written Order filed April 25, 2011, finding that counsel was ineffective for failing to object to testimony from the State's toxicologist regarding the effects of marijuana and cold medicine.

Kranchick filed her Notice of Appeal on May 2, 2011. Kranchick filed her Petition for Writ of Certiorari on August 19, 2011. Kranchick filed her Return to Petition for Writ of Certiorari on January 17, 2012. By written Order filed December 30, 2013, this Court granted certiorari and requested briefing. On October 26, 2016, the court of appeals reversed the PCR court's grant of relief. Kranchick filed a petition for rehearing which was denied on December 15, 2016. Kranchick then filed a Petition for Writ of Certiorari to the Court of Appeals on January 11, 2017. This return follows.

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

Kranchick was not prejudiced by the forensic toxicologist's testimony concluding that she was legally impaired because the State presented overwhelming evidence independent of the forensic toxicologist's testimony such that there is not a reasonable likelihood that the result of the trial would have been different.

Kranchick argues the court of appeals erred in reversing the PCR court's grant of relief. Specifically, Kranchick argues the forensic toxicologist, Gregory L. Rock's, testimony was prejudicial because he concluded Kranchick was legally impaired, thus requiring a new trial. Certiorari is not warranted in this case because the court of appeals was correct in finding Kranchick suffered no prejudice from Rock's testimony concluding that the substances present in Kranchick's system would have made her legally impaired to operate a vehicle. Even if Rock's testimony regarding the effects the drugs would have on Kranchick were suppressed, there is overwhelming evidence that Kranchick was under the influence of drugs or alcohol. Specifically, Rock properly testified to substances present in Kranchick's system which including marijuana, antihistamines, and cough suppressant. (App. p. 258-260). Furthermore, Highway Patrol Officer J.B. Baker testified that Kranchick was legally impaired because of her actions and demeanor at the incident location. Thus, the court of appeals did not err in reversing the PCR court's grant of relief. The State asks this Court to deny the Petition.

How the issue was raised below

At Kranchick's trial, the State presented testimony from Gregory L. Rock, who was qualified as an expert in forensic toxicology without objection. (App. p. 249-278). Rock, who previously testified as a forensic toxicology expert nine times, testified that he was previously employed by the South Carolina Law Enforcement Division (SLED) as a forensic toxicologist in SLED's certified laboratory after undergoing a year of training and examination. (App. p. 249-252). Rock testified that it was in this capacity that he tested blood and urine samples taken from

Kranchick within hours of the wreck. (App. p. 253-54). Overall, Rock's testimony contained three components: first, what substances were in Kranchick's system when the fluids were drawn; second, when Kranchick ingested these substances and what amount of these substances were present; and third, the effects of these substances on Kranchick. Rock testified that Kranchick's blood and urine testified positive for marijuana metabolite, antihistamines, and cough suppressant. (App. p. 258-260).

Rock testified that he found a "significant" amount of marijuana metabolite in Kranchick's system, which he classified as "more than the normal amount that we typically see" and "a lot of marijuana." (App. p. 262 ln. 16- p. 263 ln. 1). He testified that based on the amount of marijuana metabolite present in Kranchick's blood, she had likely ingested marijuana within eight hours of the sample being taken. (App. p. 264). On cross-examination, Rock conceded that if Kranchick was a "chronic user" of marijuana,⁴ then the amount of marijuana metabolite in her system could be from ingesting marijuana as far as twenty-four hours prior to the sample being drawn. (App. p. 276-77). Rock testified that smoking the quantity of marijuana necessary to have the amount of metabolite in Kranchick's blood would be enough by itself to impair one's ability to drive. (App. p. 265 ln. 6-20).

In addition to the marijuana metabolite, Rock testified that he found "very significant" amounts of over-the-counter antihistamine and cough suppressant in Kranchick's system, both which were twenty to thirty times higher than a therapeutic dosage. He testified that based on his experience, anyone taking such high dosages would be doing so to get high. (App. p. 267-268). He elaborated that such extreme doses would have hallucinogenic and sedative effects, as well as a "very, muscle relaxing effect" that would impair a person's ability to drive. (App. p. 267-268).

⁴ Based on the questioning of Rock, it appears that the term "chronic user" would refer to "somebody who may smoke everyday [sic] or a couple of times a day." App. p. 276, ln. 24-25.

Kranchick argued that trial counsel was ineffective for allowing Rock to testify to the third component – the effects of the marijuana, cough suppressant, and antihistamine, as Rock was not qualified to render such testimony.

Relevant Law

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Analysis

The court of appeals correctly found that Kranchick was not prejudiced by Rock's testimony. Where there is overwhelming admissible evidence on an element the State must prove, the failure of defense counsel to object to inadmissible evidence on the element is not ineffective assistance of counsel. See Huggler v. State, 360 S.C. 627, 634-35, 602 S.E.2d 753, 757 (2004). To prevail on a claim for felony driving under the influence, one element the State must prove is that a defendant drove a vehicle under the influence of alcohol or drugs. S.C. Code Ann. § 56-5-2946 (2009). The State may prove this element by presenting evidence such that a reasonable jury could conclude that a defendant was intoxicated. State v. Goode is directly on point in this regard. 305 S.C. 176, 179-80, 406 S.E. 2d 391, 393-94 (Ct. App. 1991). Expert

testimony that a defendant was intoxicated or would be intoxicated after ingesting a certain amount of alcohol or drugs is not necessary for a jury to find that a defendant was intoxicated. Id

Overwhelming evidence of Kranchick's intoxication, independent from the testimony in question from Rock, was presented at her trial. The exclusion of the challenged testimony on the effects of the drugs would not create a reasonable probability that a jury would have found that Kranchick was not intoxicated. Rock testified that testing performed on Kranchick's urine and blood samples showed she had ingested a large quantity of marijuana and abnormally large dosage of both cough suppressant and antihistamine. (App. p. 258 – 267). This portion of the Rock's testimony was completely within his expert qualifications.⁵

Highway Patrol Officer J.B. Baker testified that: at the scene of the accident Kranchick was confused about the direction she was traveling at the time of the accident (App. p. 174 lns. 15 – 24); Kranchick appeared “disoriented” and “confused” (App. p. 175 lns. 6 – 7); Kranchick smelled of marijuana smoke (App. p. 175 lns. 19 – 21, p. 180 lns. 6 – 7); Officer Baker believed that Kranchick was under the influence due to her reactions to his questions, her appearance, her demeanor, her swaying, and her unsteadiness on her feet (App. p. 177 lns. 18 - 21); Kranchick was unable to pass the horizontal gaze nistagmus test or the vertical gaze test (App. p. 179 ln. 13 –p. 180 ln. 2); and Kranchick had glassy and bloodshot eyes (App. p. 181, L. 1 - 2). Officer Baker testified that he did not attribute Kranchick's behavior to her having been in an accident because her behavior remained unchanged thirty minutes after the accident. (App. p. 178 lns. 3 - 6). Finally, Officer Baker testified that it was his opinion, based on his interaction with Kranchick at the scene of the accident, that her ability to drive was impaired. (App. p. 196 lns. 18 - 20).

⁵ Rock was an expert on the testing of urine and blood for the presence of alcohol or drugs due to his extensive training and experience and testified that he had previously been declared an expert on the very subject nine times prior to Kranchick's trial. (App. p. 250-52).

Apart from Officer Baker's extensive training, background, and education, a layperson may testify "whether or not in his opinion a person was drunk or sober on a given occasion on which he observed him and that the weight of such testimony is for the jury." State v. Ramey, 221 S.C. 10, 68 S.E.2d 634 (1952). Officer Baker observed Kranchick for an extended period of time at the scene of the accident and concluded that she was legally impaired.

The combination of the urine/blood test results and Officer Baker's testimony concerning Kranchick's behavior at the scene of the accident provide sufficient evidence for a reasonable jury to find that Kranchick was intoxicated at the time of the accident. See State v. Martin, 391 S.C. 508, 515, 706 S.E.2d 40, 43 (2011) (finding that intoxication can be demonstrated from the record and evidence other than the toxicologist that the State presents). Even if a toxicologist's testimony was limited to only the *presence* of the drugs, that would not create a reasonable probability of a different result. Com. v. Dunne, 456 Pa.Super. 523, 690 A.2d 1233 (Pa.Super.,1997) (driving under the influence of a controlled substance conviction affirmed despite no medical testimony when urine tested positive for methamphetamines and officer testified that defendant appeared intoxicated). Therefore, Kranchick was not prejudiced by Rock's testimony regarding the effects of the drugs present in her system because the jury had before it overwhelming evidence of her intoxication. Accordingly, this Court should deny the Petition.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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By: 

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February 21, 2017

STATE OF SOUTH CAROLINA
In The Supreme Court

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The Honorable L. Casey Manning, Circuit Court Judge

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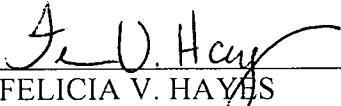
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Return to Petition for Writ of Certiorari has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Kathrine Haggard Hudgins, Esquire
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This 21st day of February, 2017



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