

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Case No. 2017-000799

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**RECEIVED**

JUN 22 2017

**SC Court of Appeals**

The State,

Respondent,

v.

John Dodge Haynes,

Appellant.

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PETITION FOR A WRIT OF CERTIORARI

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Eric Laquiere  
William L. Runyon, Jr.  
#3 Gamecock Avenue, Suite 303  
Charleston, SC 29407  
(843)571-3515  
Attorney's for Appellant-Petitioner

Other Counsel of Record  
Alan McCrory Wilson, Esquire  
John Benjamin Aplin, Esquire  
Glenn Paul Justis, Esquire  
Robert Michael Dudek, Esquire

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## Argument

- I. AN APPEAL PRIOR TO SENTENCING SHOULD BE ALLOWED WHERE THERE IS A CONSTITUTIONAL ISSUE AND THE RELIEF SOUGHT IS A WRIT OR MANDAMUS.
- II. THE RULE THAT A DEFENDANT MAY NOT SEEK APPELLATE RELIEF PRIOR TO SENTENCING IS A PROCEDURAL RULE AND HAS NOT BEEN APPROVED PURSUANT TO STATE CONSTITUTIONAL MANDATES.

## Statement Of The Case

On or about the 11<sup>th</sup> day of July, 2014 there was an auto accident in Dorchester County in which a passenger in the vehicle struck died as a result of injuries. The Defendant was the driver of the vehicle which struck the vehicle in which the deceased was a passenger. The Defendant was likewise injured. He was taken to the hospital by EMS. The police were immediately called and commenced to investigate the accident. The officer in charge of the investigation served as the probable cause witness for a search warrant to obtain the Defendants blood sample at the hospital. He also witnessed the draw of the blood, received the sample and, while in possession of the sample, took the defendant into custody and charged him with Felony DUI. He maintained control of the blood sample until it was ultimately placed in evidence, presumably under refrigeration. The officer in charge assembled the accident reconstruction team which consisted of himself and two other officers. All were trained to reconstruct accident scenes. All constructed to the ultimate reconstruction report.

Sometime after this case arose the referenced officer in charge while engaged in routine police duties unrelated to this case suffered a health crisis resulting in his instant death.

Eventually as the case approached Trial the Defendant moved to suppress the Blood Test evidence as well as the accident reconstruction evidence. The basis was that the Defendant would be unable to cross examine the deceased officer and the Defendant would be denied his confrontation rights as guaranteed by the State Constitution, Federal Constitution and the holdings in **Crawford v. Washington 541 U.S. 36 (2004)**. The State proposed that the evidence was admissible under a reliability theory as set out in **Ohio v. Roberts 448 U.S. 56 (1980)**. The Court accepted the States position. Immediate appeal was taken. Appeal was taken to the

Court of Appeals which without argument or briefs dismissed the appeal. Timely motions to set aside the dismissal with authority and reference to writ relief being sought were filed. The Court of Appeals issued its denial of this application on June 1, 2017. This application for certiorari followed.

I. AN APPEAL PRIOR TO SENTENCING SHOULD BE ALLOWED WHERE THERE IS A CONSTITUTIONAL ISSUE AND THE RELIEF SOUGHT IS A WRIT OF PROHIBITION OR MANDAMUS.

Clearly the case at hand raises a **Crawford Issue**. **Crawford v. Washington 541 U.S. 36 (2004)**. The deceased officer is more than a mere functionary handing off a piece of evidence in the chain. The Defendant would and have salient and crucial questions in the following areas:

1. What conduct or circumstances gave rise to your being the “probable cause” for the search warrant application?
2. While witnessing the blood drawn what solution did you observe being used to swab the injection area?
3. Upon receiving the blood container how was it stored prior to refrigeration?
4. If it was not immediately refrigerated how long was the period of non-refrigeration?
5. As it relates to the accident reconstruction, how did you decide what facts or factors were placed into the formulas or how did you omit such facts or factors?
6. How many computations of relevant facts, such as speed were done before the report was finally completed?

In short the deceased officer was not a mere functionary. He was the primary accuser and the Defendant would have a fundamental right to confront and cross examine him. **Crawford v. Washington 541 U.S. 36 (2004)**.

The State, on the other hand, took the position that they could get the same information in through others based on a showing of “reliability” which was the Law under **Ohio v. Roberts 448 U.S. 56 (1980)**. **Ohio v. Roberts** was specifically overruled by **Crawford**. Clearly a Writ of Prohibition/Mandamus would be an appropriate writ to seek to address a transgression wherein a basis Constitutional right is being abridged.

This Honorable Court has said:

“A defendant may still challenge the denial of a Motion to Dismiss... via (2) a petition for this Court to issue an extraordinary writ;” at **Page 13 State v. Rearick No. 2014-001692 Opinion No. 27654 (S.C. 2016)**.

This Honorable Court went on in Footnote 14 that the South Carolina Constitution allows for extraordinary writs. **State v. Rearick, Page 13 at Footnote 14 No. 2014-001692 Opinion No. 27654 (S.C. 2016)**.

One need only to consult the Code to determine that the Honorable Court of Appeals likewise has Writ authority.

II. THE RULE THAT A DEFENDANT MAY NOT SEEK APPELLATE RELIEF PRIOR TO SENTENCING IS A DE FACTO PROCEDURAL RULE AND HAS NOT BEEN APPROVED PURSUANT TO STATE CONSTITUTIONAL MANDATES AND SHOULD NOT BE APPLIED WHERE A CONSTITUTIONAL ISSUE IS INVOLVED.

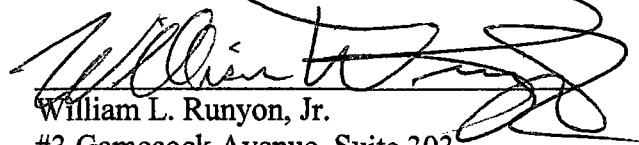
The “Rule” of no interlocutory appeals appears to be based on a theory of “efficiency” versus any real theory of Law. The Federal Courts have long allowed interlocutory appeals. Eg. Please see Rule 4 Fed. Rules of App. Procedure. Here there is a Constitutional issue with the ongoing “shadow” that the State does have the apparent right to bring an interlocutory appeal in this State. Title 14-3-330 of the South Carolina Code of Laws 1976 as amended seems to provide for interlocutory appeals. However the right to appeal for a criminal defendant seem to have been “read out” of the Statute. Thus the Rule is actually a Rule of Practice. With that in mind one must then refer to the South Carolina Constitution. Article V of the South Carolina Constitution unified the Courts. The Courts were unified. Contained within that Article are two very important provisions. The first to be considered is the Rule making authority of the Honorable

Supreme Court in Article V at Section 4A. There, there is a specific provision regarding all rules of Court to be submitted to the Legislature for review prior to becoming "Law". Article V Sect. 4A. There does not appear to have ever been a submission of the "no interlocutory appeal in criminal cases Rule" to the Legislature. Most importantly is the fact that there are specific Constitutional powers provided to this Court in the issuance of writs. Article V Sect. 5 These same powers seem to be statutorily granted to the Court of Appeals as previously noted. Please see Title 14-8-200 (a) and 200 Code of Laws of S.C. 1976 as amended.

#### Conclusion

For the foregoing reasons stated, the Petitioner respectfully submits that this Honorable Court grant the petition for writ or certiorari and upon a final adjudication issue a writ to the Lower Court enforcing the Mandates of Crawford and setting out the mandates of this Honorable Court under State v. Rearick.

Respectfully submitted,



William L. Runyon, Jr.  
#3 Gamecock Avenue, Suite 303  
Charleston, SC 29407  
(843)571-3515  
SC Bar No.: 4838

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John Dodge Haynes,

Appellant.

CERTIFICATION OF COUNSEL

Now comes the undersigned Counsel for Petitioner and hereby certifies that application for reinstatement was made and finally ruled on by the Honorable Court of Appeals and filed on June 1, 2017.

And it is so certified this 20<sup>th</sup> day of June 2017 at Charleston, South Carolina.

Eric Laquiere  
William L. Runyon, Jr.

By: 

William L. Runyon, Jr.  
#3 Gamecock Avenue, Suite 303  
Charleston, SC 29407  
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SC Bar No.: 4838

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CERTIFICATE OF MAILING

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I William L. Runyon, Jr., Esquire, do hereby certify that on the 20<sup>th</sup> day of June, 2017, I served a copy of the PETITION FOR A WRIT OF CERTIORARI , APPENDIX , CERTIFICATION OF COUNSEL and this CERTIFICATE on South Carolina Attorney General Alan Wilson, Assistant Solicitor Glenn Justis, J. Benjamin Aplin, Esquire, Robert M. Dudek, Esquire and Honorable Clerk Jenny A. Kitchings of the South Carolina Court of Appeals in the within matter, by mailing copies to them by way of the United States Mail, with sufficient postage attached thereto and addressed as follows:

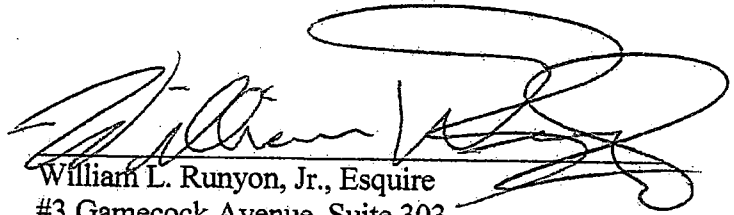
Honorable Alan Wilson  
South Carolina Attorney General  
100 Assembly Street  
Columbia, SC 29201

Honorable Glenn Justis  
Assistant Solicitor For Dorchester County  
140 N. Main Street, Suite 102  
Summerville, SC 29483

Honorable J. Benjamin Aplin  
SC Senior Asst. Deputy Attorney General  
P. O. Box 11549  
Columbia, SC 29211-1549

Honorable Robert M. Dudek  
SC Commission on Indigent Defense  
P. O. Box 11589  
Columbia, SC 29211

Honorable Jenny A. Kitchings  
Clerk of South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211



William L. Runyon, Jr., Esquire  
#3 Gamecock Avenue, Suite 303  
Charleston, SC 29407  
SC Bar No.: 4838  
(843) 571-3515

Dated this 19<sup>th</sup> day of June, 2017  
in Charleston, South Carolina.

# William L. Runyon, Jr.

Attorney At Law

#3 Gamecock Avenue, Suite 303

Charleston, SC 29407

Telephone: (843) 571-3515 Facsimile: (843) 766-5085

June 20, 2017

Honorable Clerk Daniel E. Shearouse  
The Supreme Court of South Carolina  
1231 Gervais Street  
P. O. Box 11330  
Columbia, SC 29211

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SC Court of Appeals

RE: Petition For Certiorari  
The State v. John Dodge Haynes

Dear Mr. Clerk:

Please find enclosed the following:

1. Petition for Certiorari original plus six copies in the above matter with an additional copy
2. Certification of Counsel
3. Appendix 2 Bond Copies, 1 Unbound Copy
4. Certificate of Service

By copy of this letter and copies of the foregoing we are filing same with the Honorable Clerk of Court of Appeals. Please find enclosed a self-addressed stamped envelope and an extra copy of Petition for Certiorari for stamping and returning to us for our file at your convenience.

Thanking you, I remain

Sincerely,



William L. Runyon, Jr.

WLR, JR. / bb

Cc: Honorable Alan Wilson  
Honorable Jenny A. Kitchings  
Assistant Dorchester County Solicitor Glen Justis  
Honorable Robert M. Dudek  
Honorable J. Benjamin Aplin

# William L. Runyon, Jr.

Attorney At Law

#3 Gamecock Avenue, Suite 303

Charleston, SC 29407

Telephone: (843) 571-3515 Facsimile: (843) 766-5085

June 20, 2017

Honorable Jenny A. Kitchings  
Clerk of South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC, S.C. 29211

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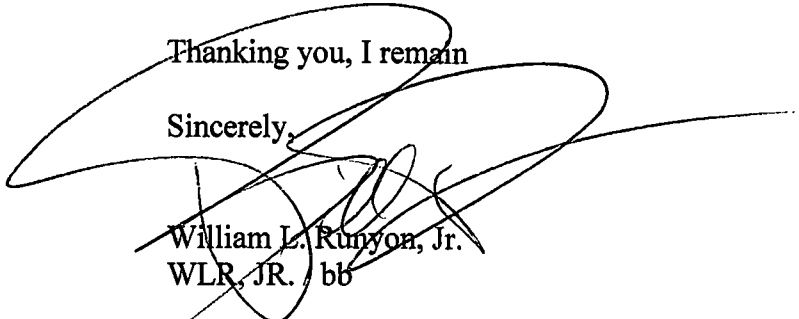
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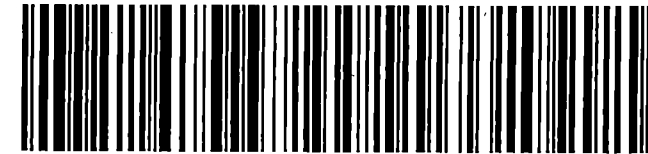
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William L. Runyon, Jr.  
Attorney At Law  
#3 Gamecock Ave.,  
Suite 303  
Charleston, SC 29407

Honorable Jenny A. Kitchings  
Clerk of South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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