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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No.: 2017-001392

THE STATE,

Respondent,

vs.

JOHN DODGE HAYNES, JR.,

Petitioner.

REPLY TO RETURN OF RESPONDENT

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STATEMENT OF REPLY

THE RESPONDENT RETURN DOES NOT ADDRESS ESSENTIAL QUESTIONS RAISED BY THIS PETITION AND THEREFORE THE PETITION SHOULD BE GRANTED.

STATEMENT OF CASE

On or about the 11th 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.

STATEMENT OF REPLY

THE RESPONDENT RETURN DOES NOT ADDRESS ESSENTIAL QUESTIONS RAISED BY THIS PETITION AND THEREFORE THE PETITION SHOULD BE ADDRESSED.

ARGUMENT

The Respondent's Return makes clear their position that a criminal defendant in South Carolina does not have the right to appeal. The Return is replete with the historical list of cases supporting that position. What the Return does not address is the Constitutional question raised by footnote 14 in State v. Rearick. State v. Rearick No. 2014-001692 Opinion No. 27654 (S.C. 2016) There is no Law cited which denies that the South Carolina Constitution grants to this Court the jurisdiction to issue writs. South Carolina Constitution Article V Section 5

This Court has noted this in its opinion in State v. Rearick. This was not written as a lark or as necessary to decide Rearick. At no point is there a citation which says a criminal defendant has to wait until sentencing to seek a writ to assist in his/her own defense. Additionally the State takes the position that the State need not follow Crawford until this Court catches them violating the constitutional Right of Confrontation. Furthermore that State never addresses the State Constitutional "Rule" making authority of this Honorable Court and the necessity to submit its Rules to the Legislature. Article V Section 5 There is no jurisdiction which requires finality of a case prior to seeking "Writ" relief. As a matter of fact Rearick even cites "other remedies" in discussing Habeas Corpus. State v. Rearick INFRA Furthermore there is no Rule of appellate procedure which gives defendants the access to the Courts writ powers other than an "appeal."

This appellant is not appealing a "ball or strike" decision by a Trial Judge. What is being sought is relief guaranteeing his rights under Crawford. Crawford v. Washington 541 U.S. 39 (2004) What the State is proposing in their reply is to allow the State to dodge constitutional responsibilities until a defendant is sentenced and this Court "catches" them at it. This application raises very serious constitutional questions rooted in a U.S. Supreme Court decision and a decision of this Honorable Court as well as the South Carolina Constitution.

Accordingly it would be respectfully submitted that the Respondents, by inference, agree that the issues presented herein be answered.

CONCLUSION

For the reasons asserted in the Petition for Certiorari, the failure to address the questions raised in Rearick by the State and the fact that there is no “finality” decision when it comes to a defendant seeking a constitutional protection through the vehicle of a writ it is respectfully asked that certiorari be granted so that these issues may be fully addressed by this Honorable Court.

Respectfully submitted,

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CERTIFICATE OF MAILING

I William L. Runyon, Jr., Esquire, do hereby certify that on the 26th day of July, 2017, I served a copy of the **REPLY TO RETURN OF RESPONDENT** on South Carolina Attorney General Alan Wilson, Assistant Attorney General Mark R. Farthing, Solicitor David M. Pascoe, Jr. and Robert M. Dudek, Esquire 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:

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Dated this 26th day of July, 2017
in Charleston, South Carolina.