

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT

APPELLATE CASE NO. 2014-002548

Appeal from Richland County

The Honorable Robert E. Hood, Circuit Court Judge

Opinion No. 5501

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SC Court of Appeals

PETITION FOR REHEARING

Appellant Lorenzo Young (“Young”) petitions this Court for rehearing on its harmless error holding. While the Court initially states the correct legal standard for a harmless error analysis, the **application** appears to use the standard of review from a directed verdict case—viewing the evidence in the light most favorable to the State. Weighing the evidence in the State’s favor in its harmless error analysis removed the jury’s power to judge the credibility of the witnesses against Young. Furthermore, the error in this case was a creature of the State’s own making and relying on harmless error to affirm will fail to deter such conduct.

Conspicuously absent from the Court's opinion is the full text of the erroneously admitted letter from co-defendant Barnes. The letter, reproduced in full below, contains multiple claims that Young planned the robbery and murdered Hunnewell:

Your Son
Trenton. B

Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis **and renzo was on the phone** with his baby mama we was the only two up and **he got off the phone was like let me talk tew you when you done. Then he was like I got this lul lick** and then I was like I don't know bruh I'm koolin talking to my lady **and he was like money come first.** I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on the phone then Ty had text me **renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing** then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me **do I have a gun** and I said no but I know way one at he said way at and I said I know way Shorty be putting his gun at out side so I took him to it and **he pulled out his gun** and said which one you won't and I said the small one then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped's and drit bikes and **he was like just a lul lick so we was at the bar down the street** from the house it started raining hard and I was like I'm bout to go home **and he said hold on lul bruh then he was like damm they closed** so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody **he was like come on then we was by the door and I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back **then renzo walk into the place and I went behind him then he grabed her and put the gun to her head** and told me **to get in front of her** and she swang at me and I closed my and jump I got scared ma I didn't want to do it. I'm sorry. I said it was troy because **I was scared to go to jail with renzo by myself** im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just

wanna come home and be with you people keep telling me im going to prison for a long time love you mama I just wanna come home real soon not no grown man.

Love You MAMA
Your BaBy Boy
Trenton

R. 1617-18 (emphasis added). If the erroneous admission of a co-defendant's letter like this can be harmless, then the Court's published opinion should include its full text for the benefit of bench, bar, and legal scholars. See State v. Collins, 709 S.C. 524, 540 763 S.E.2d 22, 31 (2014) (Pleicones, J., dissenting) ("In my opinion, the only way we can educate the bench and bar as to that which is and is not beyond the pale is to publish these horrific photographs with our opinion.").

Respectfully, the Court erred in determining that the State's evidence overcomes what it already found to be a jury prejudiced by and rendered partial by admission of the Barnes letter. This conviction was based on the testimony of three jailhouse snitches and DNA evidence that marginally incriminated Young and one-third of the people on the planet. The Court should grant rehearing and reverse and remand this case for a new, fair trial for Young.

1. *The Court's Harmless Error Analysis Is Inherently Flawed*

The Court acknowledged the logical inconsistency in its own opinion. The Court wrote that finding harmless error after deciding that the jury had been so prejudiced that it could not follow a limiting instruction was "counter-intuitive." Op. at 14. On the facts of this case, the Court's harmless error analysis denies Young his right to a trial by an impartial jury. The Court's analysis discusses whether it was "probable" that other evidence, particularly jailhouse snitch testimony, swayed their verdict. Op. at 14. Equally probable is that the Barnes letter contributed to the verdict. See State v. Brewer, 411 S.C. 401, 408-09, 768 S.E.2d 656, 660

(2015) (stating that errors are harmless when they “could not have reasonably affected the result of a trial” and reversing a conviction after criticizing the State, calling it “chilling” that the Court had to remind the executive branch that “an accused is presumed innocent”). Because these assessments of probabilities from a cold record necessarily involve the forbidden practice of weighing evidence and credibility in an appeal, the error in this case cannot be harmless. See State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016) (holding that an error could not be harmless because the “case hinged on credibility”).

The jury had to discuss the Barnes letter in the jury room. They had to read it and discuss it when they deliberated Barnes’ guilt. If the letter was part of Barnes’ guilt, then the jury also had to discuss it regarding Young’s guilt because of other instructions. The trial judge charged the jury on hand of one, hand of all. Furthermore, as recognized by the Court, the jury could not have followed the limiting instruction. The prejudicial effect of a letter repeatedly blaming “renzo” for Hunnewell’s murder cannot be overstated. On the facts of this case, it was impossible for Young to receive a fair trial with the Barnes letter in evidence. Young’s trial was not “fundamentally fair” and the only way to reach such a conclusion was to ignore the harmless error standard and weigh the evidence, both of which are errors. Op. at 17.

2. The Court Improperly Weighed the Evidence

The Court begins its harmless error analysis by reciting the proper standard—that errors must be harmless beyond a reasonable doubt. Op. at 13-14. However, the Court’s analysis ignores this standard and persistently views the evidence in the light most favorable to the State. This constitutes a legal error. The evidence cited by the Court as overwhelming is deeply flawed and the Court’s decision denies Young of his right to have the jury consider the credibility of the witnesses and the State’s evidence.

a. The Snitches

The Court places great emphasis on the testimony of three jailhouse snitches, stating it is “probable” their testimony damaged Young more than the Barnes letter. The Court’s analysis necessarily assumes that the snitches’ testimony is credible. Assuming the snitches’ testimony is credible means that the Court has viewed their testimony in the light most favorable to the State, which is improper. In fact, snitch testimony is suspect as a matter of law. United States v. Luck, 611 F.3d 183, 186-90 (4th Cir. 2010) (holding trial counsel ineffective and reversing conviction for failing to request a jury instruction that informant testimony “must be examined and weighed by the jury with greater care than the testimony of an ordinary witness.”).

Snitch Wright was represented by Barney Giese, who was present in the courtroom during his testimony. R. 704, ll. 5 – 14. Snitch Wright had pending charges for murder, first-degree burglary, criminal conspiracy, and armed robbery. R. 703, ll. 9 – 11. The same solicitor’s office was prosecuting both Young and Snitch Wright. R. 709, ll. 3 – 17. Snitch Wright was no longer at the Richland County jail and had been moved to another facility. R. 707, ll. 18 – 22. Snitch Wright knew Snitch Schaefer. R. 707, l. 23 – 708, l. 17.

Snitch Wright claimed he heard Young confess in the law library on February 28, 2014. R. 706, ll. 20 – 25. Young supposedly confessed this horrific crime to Snitch Wright even though they only met one time. R. 707, ll. 3 – 4. On cross-examination, Snitch Wright admitted that jail policy did not allow inmates to go to the law library thirty days after their release from the SHU. R. 710, ll. 3 – 6. He stated he was surprised to learn that Young was released from the SHU on February 19, which meant that jail policy would not have allowed him to be in the library. R. 713, ll. 1 -15.

Snitch Schaefer pled guilty to three counts of armed robbery in July 2014 (a possible 90 year sentence, or LWOP) and received concurrent twelve year sentences. R. 879, ll. 5 – 20. In April 2014, months before his guilty plea, he reported Young’s alleged confession with the assistance of his attorney, William Hodge. R. 883, ll. 4 – 14. Snitch Schaefer admitted knowing Snitch Wright. R. 882, ll. 16 – 17.

Snitch Peterson faced life in prison for murder and kidnapping. R. 799, ll. 15 – 24. He was being prosecuted by the same solicitor’s office. R. 799, ll. 15- 24. He was represented by Victor Li, who was present in the courtroom during his testimony. R. 800, ll. 14 – 21. He relayed his allegations to the solicitor’s investigator with the help of his attorney. R. 800, ll. 22 – 24. Snitch Peterson had written letters to the solicitor’s office on another occasion in an attempt to testify against another defendant. R. 811, ll. 12 – 20.

Importantly, all three snitches testified after the Barnes letter was introduced into evidence. With the Barnes letter already indelibly implanted in their minds, the jury was likely to find the snitches’ testimony simply confirmed the letter’s version of events instead of assessing the snitches’ dubious credibility. All three snitches admitted they had access to televisions and Hunnewell’s murder received extensive media coverage. R. 708, l. 20 – 709, l. 2 (Snitch Wright). R. 882, l. 22 – 883, l. 3 (Snitch Schaefer). R. 802, l. 4 – 803, l. 1 (Snitch Peterson). Weighing the snitches’ testimony in the light most favorable to the State to find harmless error ignores the proper standard of review.

b. Donald Moore

The Court improperly relies on the testimony of Donald Moore, who went to the police to incriminate Young because the “word on the street” was that he was the police’s chief suspect. R. 595, ll. 5 – 7. Moore admitted on cross-examination that he made up his statement to police

incriminating Young in order to clear his own name. R. 594, l. 3 – 595, l. 18. Relying on Moore’s testimony in its harmless error analysis requires believing his first statement, which Moore said was a lie. The Court may not weigh Moore’s testimony in the State’s favor in conducting its harmless error analysis.

c. *The “Physical Evidence”*

The Court relies on what it calls “physical evidence” against Young to distinguish his case from the Bruton error in State v. Henson, 407 S.C. 154, 754 S.E.2d 508 (2014). First and foremost, the Court relies on the videotape. None of Hunnewell’s assailants can be identified on the videotape. State’s Ex. 323. All wear common articles of clothing and their faces are obscured. State’s Ex. 323. While Barnes’ mother could supposedly identify him on the videotape, Young was never identified. As the Court noted in its examination of the letter, Barnes and his family had a strong motive to attempt to deflect blame from Stevenson and incriminate Young. Relying on the videotape in conducting a harmless error analysis in this case necessitates weighing the evidence and inferences in the State’s favor, which is improper.

The Court also relies on the State’s worthless DNA evidence. The State’s DNA expert could not even definitively say that Young’s DNA was **included** as a contributor—only that he could not be **excluded** as a contributor. R. 969, ll. 12 – 18. Along with Young, one third of the world’s population fell into this same unilluminating category. DNA evidence in most cases speaks in terms of matches with probabilities so high that the numbers sound invented. This DNA evidence had virtually no probative value and the Court erred by improperly weighing it in the State’s favor against Young.

3. *The State's Willingness to Use Blatantly Inadmissible Evidence to Secure Young's Conviction Further Proves this Error Cannot be Harmless*

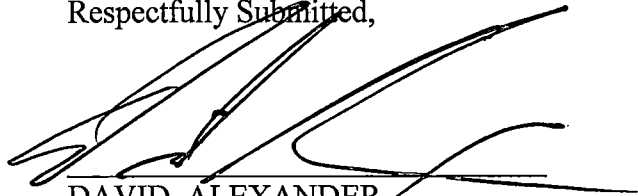
The State's willingness to use the Barnes letter in the first place demonstrates that this error cannot be harmless. The Court chastises the solicitors for using evidence they should have known was inadmissible. Op. at 16-17. Appellant submits that the solicitors knew their case against Young was weak and they were willing to go to extraordinary lengths to secure his conviction in this high-profile case. The Court's admonishment proves the value of the Barnes letter against Young.

As the Court points out, the State created this error when it chose to try Young and Barnes together. Op. at 16-17. The State knew that if it tried Young alone, it would be forced to do so without this letter and made the decision to set a trap for the court with this joint trial.

The Court should heed the cautionary advice of Justice Brennan, who, in a case cited by this Court in its opinion, warned of the diminishment of appellate courts' role in deterring police and prosecutors' conduct if the harmless error doctrine was applied indiscriminately. See Harrington v. California, 395 U.S. 250, 255-57 (1969) (Brennan, J., dissenting). Listing the landmark cases upon which our modern criminal law is based (including Bruton), Justice Brennan wrote that "[T]he deterrent effect of such cases . . . on the actions of both police and prosecutors, not to speak of trial courts, will be significantly undermined." Id. at 255. "By its nature, the issue of substantiality of evidence admits of only the most limited kind of appellate review." Id. at 256. If the Court's harmless error analysis stands in this case, Justice Brennan's

fifty-year old prediction will be proved correct. Aggressive solicitors will read this opinion and see not what is forbidden, but what they can get away with.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

DAVID ALEXANDER
Appellate Defender

This 3rd day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

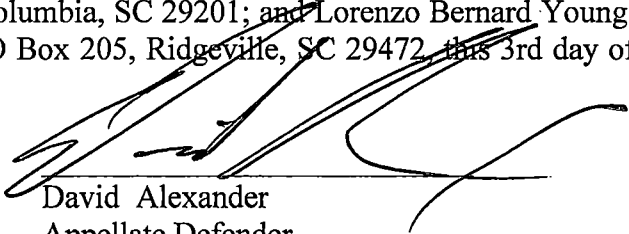
V.

LORENZO BERNARD YOUNG,


APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lorenzo Bernard Young, #362169, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of August, 2017.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 3rd day of August, 2017.



Notary Public for South Carolina
My Commission Expires: July 3, 2023