

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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JUL 24 2017

APPEAL FROM LEXINGTON COUNTY S.C. SUPREME COURT  
Court of General Sessions

Honorable Brian M. Gibson, Circuit Judge

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Appellate Case № 2016-000885

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Willie J. Richardson, ..... Respondent

VS

The State, ..... Appellant

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C. RAUCH WISE  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010

Attorney for the Respondent

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## STATEMENT OF THE CASE

Willie J. Richardson agrees with the Statement of the Case as set forth in the Brief of the Petitioner.

### Argument

#### Question Presented

**The Post Conviction Relief judge did not err in finding Respondent satisfied his burden of proving Trial Counsel was ineffective for failing to interview and call the alibi witnesses who testified at the Post Conviction Relief hearing.**

The Post Conviction Relief judge had ample evidence from which he could conclude that trial counsel was ineffective in failing to call the alibi witnesses and introducing the related exhibits. First, it should be noted that trial counsel testified he knew of witnesses who were not called to testify. He stated concerning his investigator “I don’t recall who he talked to and things of that nature, but the gist of it was that a number of people were able to establish that Mr. Richardson was in New York.” App. at 659, ll 4-7. He stated he talked to Greg Huge, the brother who testified at the PCR hearing. App. at 665, ll 13-19. He did make arrangements to have Michelle Richardson, the sister of Mr. Richardson come to Lexington to testify. But when the date was changed at the last minute, he did not request a continuance to enable her to testify. App. at 664, ll 5-9. The trial transcript does not show any request for continuance was made by defense counsel in order to obtain the testimony of this alibi witness.

The PCR Judge heard the testimony of the witnesses. He reviewed the exhibits introduced by Mr. Richardson. He read the transcript of the trial. He was in the position to observe the witnesses who testified and make a determination as to whether they could have had

an impact on the jury verdict. He concluded “there is a reasonable probability that the result in the murder trial would have been different if the witnesses had testified and the exhibit presented.” App. at 743. The record in this case is not devoid of any evidence to support this conclusion.

The State’s reliance upon *Bergmann v. McCaughtry*, 65 F.3d 1372, 1380 (7<sup>th</sup> Cir. 1995) is misplaced. The Court said:

Bergmann's counsel testified that he decided not to call William Scott to testify about the guns because William Scott failed to mention the guns at a preliminary hearing. William Scott had further testified at the preliminary hearing that Bergmann left the house at a time which was consistent with Trawitzki's version of events. Counsel decided that in light of the preliminary hearing, William Scott could be a “dangerous” witness for Bergmann, and he therefore declined to call him. Such a considered decision is also well within the realm of sound trial strategy. *Id.* at 1380.

No such rational trial strategy was presented in this case. The case hardly supports the blanket proposition that “trial counsel was not ineffective for failing to call family members who would easily have been impeached for bias.” Pet. of Resp. at 14-15.

Nor is *McCauley-Bey v. Delo*, 97 F.3d 1104, 1106 (8<sup>th</sup> Cir.1996) helpful to the State. The Eighth Circuit said:

McCauley-Bey's three uncalled witnesses were all subject to impeachment. Neither James Massey, Tyrone Mitchell, nor Eva Washington came forward promptly. James Massey could have been impeached with a prior assault conviction. Tyrone Mitchell was the brother of McCauley-Bey's girlfriend, Sharon Mitchell. Further, Tyrone Mitchell's ability to observe could have been challenged. Initially, based on his testimony at the evidentiary hearing, Mitchell would have testified at trial that he saw the shooting, that he saw McCauley-Bey and Sharon Mitchell running from the shooting, and that he was ducking during the shooting. In addition, details of Tyrone Mitchell's account are not consistent

with the testimony of other witnesses who testified that the shooting took place at night with the shooter firing into the van while standing between a truck and the van. By contrast, Mitchell would have stated that the shooting took place at dusk and that he saw no truck. Mitchell was approximately three blocks away from the shooting; if the truck was there, it likely would have blocked Mitchell's view. *Id.* at 1106

No such impeachment existed against the witnesses in this case. Here the PCR judge specifically noted that the witnesses had not been impeached and they held responsible positions. In fact Ernest Richardson submitted an affidavit dated August 9, 2013, well before the January 22, 2014. Supp. App. at 1. The affidavit was submitted in a request for a continuance during the previous PCR term of Court for Lexington County. If there were material to impeach Mr. Richardson, the State had time to locate it. The testimony of the witnesses was consistent that Mr. Richardson had been in New York before the shooting and was in New York after the shooting. No witnesses testified that Mr. Richardson left New York at any time during the week-end of the shooting.

In *Romero v. Tansy*, 46 F.3d 1024, 1029 (10<sup>th</sup> Cir. 1995) the importance of any alibi testimony was undercut by the defendant's own statements to his attorney. The Court found "Importantly, James [trial counsel] further testified that appellant told him that Ms. Montoya could not identify him because he was wearing a hat and sunglasses and because she could not see very well. James inferred from this statement that appellant was at the crime scene and probably committed the robbery." *Id.* at 1029.

As noted by the PCR Judge, this case is controlled by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014). In that case this Court said:

That testimony provides evidence supporting the PCR court's

conclusion that Reed offered alibi testimony that reasonably could have resulted in a different outcome at trial. If true and construed as meaning at least that Walker and Reed spent every night together on the weekends prior to his arrest, it would be physically impossible for Walker to have committed the kidnapping and assaults. *Id.* at 406, 756 S.E.2d at 147.

Here, the witnesses offered testimony that reasonably could have resulted in a different outcome. The PCR Judge, as in *Walker*, found the witnesses credible and therefore the record contained ample evidence to support the decision of the PCR court.

The State in trying to make the facts of this case fit into the principles of *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) is attempting to fit the proverbial square peg into a round hole. In *Glover* the crime occurred about 8:30 pm in Williamsburg County. The alibi witness placed Mr. Glover in Florida between 8:00 to 8:30 am. The witness lived only about six and a half hours from Williamsburg County, as noted by this Court in footnote 1. In this case, using Google Earth, the distance from Brooklyn, NY, where Mr. Richardson was, and Meadowlark Rd, in Chapin, SC, where the shooting occurred is 740 miles.<sup>1</sup> The ability for Mr. Richardson to be at a party in Brooklyn, NY on the afternoon of the day of the shooting and then leave and arrive in Chapin, SC in time for a 1:30 to 20 am shooting has not been shown by the State. The witnesses testified he was in Brooklyn the next day also. As Mr. Richardson was in Brooklyn, NY the day of the shooting, the witnesses did in fact provide him with an alibi.

The failure to call other family members was also prejudicial to Mr. Richardson because his mother testified other family members were present. *App.* at 474, ll 9-17. The jury could

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<sup>1</sup> This Court took judicial notice of the distance between Gary, TN and Johnson City, TN in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), n. 3.

easily have raised the question of why the other family members did not testify. There was no attempt to explain why they were not present.

*Overwhelming Evidence of Guilt*

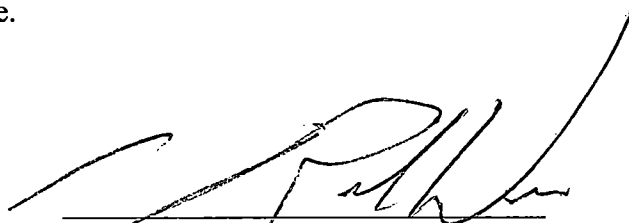
The evidence in this case was not overwhelming. In fact during the deliberations, the jury advised the Court they could not reach a verdict. App. at 519. They requested additional statements if they were available. App. at 518. They deliberated from 10:36 am until 4:14 pm. In addition, one of the key witness for the State, Kirby Blooker, testified he knew Willie Richardson, but did not tell the officers when he was interviewed that he knew Mr. Richardson. App. at 437, 1 19. There was no DNA in this case. There were no fingerprints. The police interviewed the girl friend of Willie Richardson and found the automobile seen at the crime scene was at the house where she was staying. App. at 317, 1 2 to 318, 1 23. They never asked her where she was the night of the incident. Shortly after the shooting, she vanished. App. at 322, 1 23 to 323, 1 7.

The only evidence against Mr. Richardson was eye witnesses who gave very vague and general descriptions the night of the incident. They also arrested Mr. Richardson in New York which in a sense actually helped to confirm his alibi. App. at 323, 11 8-12.

## CONCLUSION

Ample evidence exists in the record in this case to support the factual findings of the Post Conviction Relief Judge. The evidence certainly exceeds the any evidence standard of review in a Post Conviction Relief case. Nor did the Post Conviction Relief Judge make any error of law in his opinion that would be reviewed de novo by this Court. This Court should, therefore, deny the Petition for Writ of Certiorari requested by the State.

July 18, 2017



C. Rauch Wise  
305 Main St.  
Greenwood, SC 29646  
(864) 229-5010  
[rauchwise@gmail.com](mailto:rauchwise@gmail.com)  
S. C. Bar No 06188  
Attorney for Willie Richardson

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on July 18, 2017, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Return in the above case addressed to Justin.J. Hunter, Office of the Attorney General, P.O. Box 11549, Columbia, SC, 29211

Sworn to and Subscribed

*Sandy Traynham*

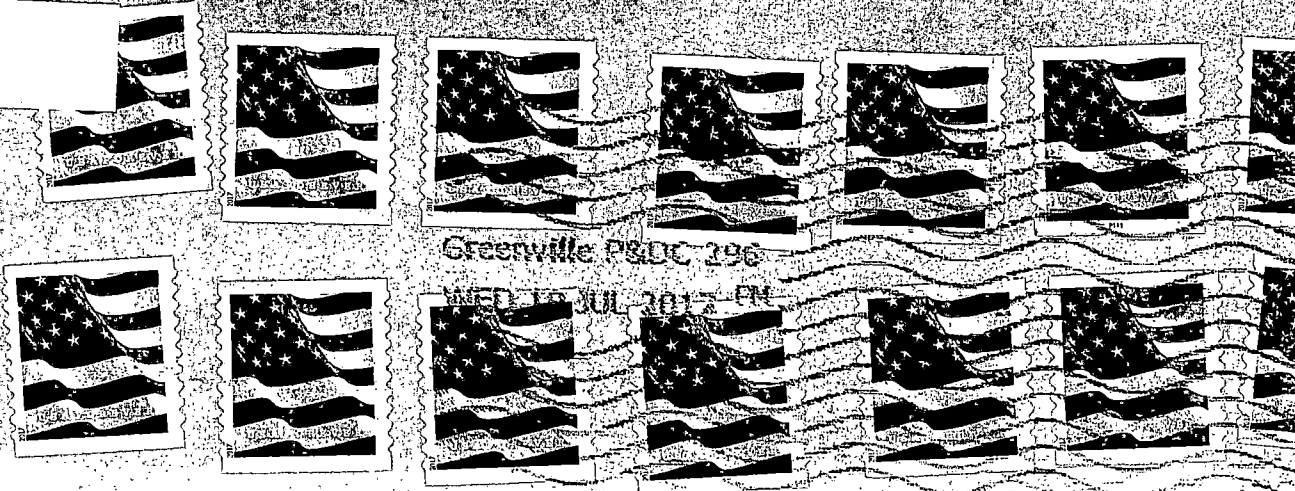
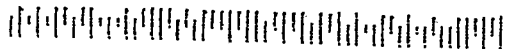
before me this 18<sup>th</sup> day

of July, 2017

*Nichelle O Collins*

Notary Public for South Carolina

My Commission Expires: 12/13/2026



Greenville PSC 296

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LAW OFFICE OF  
**C. RAUCH WISE**  
Attorney & Counselor at Law  
305 Main Street  
Greenwood, SC 29646

Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211