STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Robert E. Hood, Circuit Court Judge

Opinion No. Op. 5501 (S.C. Ct. App. filed July 19, 2017)

2014-GS-00745, 00746, 00747, 00749

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

PETITIONER

APPELLATE CASE NO. 2017-002191

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 21, 2017.

QUESTION PRESENTED

Whether, the Court of Appeals erred in finding harmless the trial court's error in admitting an unredacted letter written by petitioner's co-defendant that implicated petitioner by name in the murder over petitioner's hearsay objection, and in not granting a mistrial after petitioner's objections that no limiting instruction could be sufficient?

STATEMENT OF THE CASE

On February 19, 2014, a Richland County grand jury indicted petitioner Lorenzo Young for murder, kidnapping, second-degree burglary, and attempted armed robbery. R.1619. Petitioner was indicted along with Trenton Barnes ("Barnes") and Troy Stevenson ("Stevenson"). Barnes and Stevenson are brothers. On November 10, 2014, petitioner and Barnes were tried together before the Honorable Robert Hood and a jury. R 1. Dolly Garfield, Luck Campbell, and Nicole Simpson represented the State. R 1. Tracy Pinnock, Stephen Krzyston, and Jacqueline Bambach represented petitioner. R 1. Mark Schnee represented Barnes. R 1. The jury convicted both defendants on all charges. R. 1593, l. 8 – 1594, l. 8. Judge Hood sentenced petitioner to consecutive terms of fifteen years' imprisonment for burglary, twenty years' imprisonment for attempted armed robbery, and life imprisonment without the possibility of parole for murder. R. 1612, l. 13 – 1613, l. 4. On April 17, 2017, a panel of the Court of Appeals consisting of Judges Geathers, McDonald, and Hill heard oral argument on petitioner's appeal. App. 1. On July 19, 2017, the court issued a published opinion affirming petitioner's convictions. App. 1. On September 21, 2017, the court denied petitioner's petition for rehearing. App. 28. This petition for certiorari follows.

ARGUMENT

The Court of Appeals erred in finding harmless the trial court's error in admitting an unredacted letter written by petitioner's co-defendant that implicated petitioner by name in the murder over petitioner's hearsay objection, and in not granting a mistrial after petitioner's objections that no limiting instruction could be sufficient.

Introduction

By affirming petitioner's conviction, the Court of Appeals stretched the harmless error doctrine past its breaking point. The court held that an error so prejudicial that no limiting instruction could cure its effect on the minds of jurors was nevertheless harmless because of jailhouse snitches and DNA evidence that implicated one-third of the planet's population. The opinion acknowledged that this result was "counter-intuitive." App. at 14. The court reached this "counter-intuitive" result by merely reciting without applying the "beyond a reasonable doubt" standard for finding errors harmless. In actuality, the opinion views the evidence in the light most favorable to the State. Finding this error harmless removes from the jury the ability to fairly weigh the State's evidence and credibility of its witnesses. The error here cannot be harmless without the appellate court substituting its judgment regarding witness credibility for the jury's.

The error in this case was the State's fault. App. at 17. The court chastised the State's decision to use evidence "forbade a generation ago" and "condemned a generation before that." App. at 17. The State chose to use this forbidden evidence because it needed the forbidden prejudice that would accrue in the jurors' minds to get its conviction in this highly publicized trial. By applying harmless error, the Court of Appeals ignored the "beyond a reasonable doubt" standard and rewarded the State, its cautionary words likely falling on deaf ears. This Court should grant

certiorari to reaffirm that errors must be harmless beyond a reasonable doubt and to remind the State that its actions at trial still have consequences on appeal.

The Error: The Barnes Letter

The Court of Appeals failed to include text of the erroneously admitted letter in its opinion. 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."). Reading the whole letter—like the jury did—is necessary to see why its admission cannot be harmless. Petitioner Lorenzo Young's co-defendant, Trenton Barnes ("Barnes"), wrote his mother the following letter from jail accusing "renzo" of planning the robbery of the Carolina Café bakery and murdering Kelly 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). The "troy" referenced in the letter is Barnes' brother Troy Stevenson, who was also charged in Hunnewell's murder, but was not tried with Young and Barnes.

The Court of Appeals correctly held that admission of this hearsay letter from a non-testifying co-defendant was error, applying our state's well-established hearsay rules and Williamson v. United States, 512 U.S. 594 (1994). The Court of Appeals then correctly held that the trial judge's limiting instruction not to consider the Barnes Letter against Young did not cure the error, applying the reasoning of Bruton v. United States, 391 U.S. 123 (1986) and our state law. What requires the intervention of this Court is to correct the harmless error analysis that followed.

The Evidence Against Young Other than the Barnes Letter Cannot Support a Legal Conclusion of Harmless Error Beyond a Reasonable Doubt

Errors in a criminal trial must be harmless beyond a reasonable doubt. State v. Henson, 407 S.C. 154, 166-67, 754 S.E.2d 508, 515 (2014) (holding that the Bruton error in a case was not harmless). "That requires a court to determine 'whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.'" Id. *quoting* Fahy v. Connecticut, 375 U.S. 85, 86 (1963). The deeply flawed evidence cited by the Court of Appeals is insufficient to extinguish the possibility that the Barnes Letter contributed to Young's conviction.

a. The Snitches

The Court of Appeals placed great emphasis on the testimony of three jailhouse snitches. As the United States Supreme Court has observed, informers pose "serious questions of credibility." Banks v. Dretke, 540 U.S. 668, 701-02 (2004) (internal quotations omitted). The court here stated it was "probable" the snitches' testimony damaged Young more than the Barnes Letter. The court's analysis necessarily assumed that the snitches' testimony was credible. Assuming the snitches' testimony to be credible means that the Court viewed their testimony in the light most favorable to the State, which is improper.

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. 801, 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). Relying on the snitches' testimony to find harmless error ignores the proper standard of review by weighing their testimony in favor of the State.

b. Donald Moore

The court improperly relied 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 erred by weighing Moore's testimony in the State's favor.

c. The "Physical Evidence"

The court relied on what it called "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 relied 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 Barnes on the videotape, Young was not 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 required weighing the evidence and inferences in the State's favor, which was improper.

The Court of Appeals also relied 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.

Errors in Convictions Dependent Upon Witnesses with Shaky Credibility and Little Physical Evidence Are Not Harmless

The unreliable evidence in Young's case is similar to other cases in which this Court has rejected the State's contention that the error was harmless. In Henson, the Bruton error was not harmless because the chief witnesses "both faced charges for their participation in the crimes and thus, had an incentive to downplay their involvement and shift blame onto others." Henson at 167, 754 S.E.2d at 515.

In State v. Gracely, 399 S.C. 363, 375-77, 731 S.E.2d 880, 886-87 (2012), the Confrontation Clause error was not harmless. This Court wrote in Gracely, "Given the State's heavy reliance on circumstantial evidence, and the abysmal credibility of the State's witnesses, the error in this case was not harmless." Gracely at 375, 731 S.E.2d at 886. The witnesses in Gracely "cooperated following arrest" and faced "the possibility of long prison terms." Id. at 377, 731 S.E.2d at 887. In State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), the State's chief witness faced life in prison and the error was not harmless.

Like in Henson, Gracely, and Mizzell, the credibility of the State's witnesses was too suspect to render the error harmless. Moore was the original suspect for the murder and admitted lying on the witness stand. The three snitches all faced serious charges. If the jail's rules were followed, one snitch's testimony could not be true. Also like Henson, Gracely, and Mizzell, the

physical evidence against Young was scant. Young could not be identified on the videotape and the State's DNA evidence was nearly worthless.

This Court should also consider the State's willingness to use the Barnes Letter despite its patent inadmissibility as evidence of its importance in this case. The court stated the solicitors should have indisputably known the Barnes Letter was inadmissible and it was "perplexed" by the State's decision to seek its admission. App. 16. Petitioner submits there is nothing perplexing about the State's need for this letter: the solicitors knew their case against Young was weak and they **were counting on the jurors not following the limiting instruction**. As the Court of Appeals candidly observed, seasoned trial lawyers know that jurors cannot follow limiting instructions of this sort. The State knew that if it tried Young alone, it would be forced to do so without this letter and made the decision to pursue a joint trial despite the fact that the letter was inadmissible against Young. An affirmance based on harmless error rewards the State's strategy. The Court of Appeals' chastisement unaccompanied by reversal is insufficient to discourage solicitors in future cases.

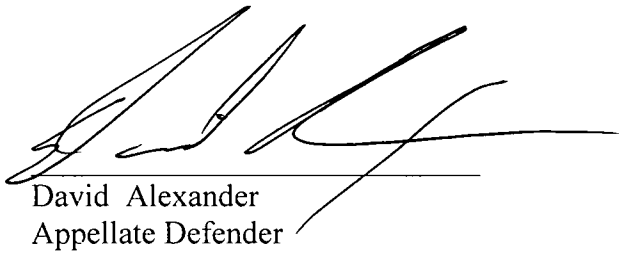
Finally, it must be remembered that the error here was not insubstantial: it went to the very heart of the case and was so prejudicial the jury could not, as a matter of law, put it aside. Appellate standards of review are constructed to ensure that cases are not needlessly taken away from the ambit of trial judges and juries. A reversal of a conviction takes a case away from the jury. But an affirmance on harmless error does the same thing—it takes a case away from a future, fair jury untainted by error and replaces it with a hypothetical reasonable jury. In this case dependent upon snitch testimony and circumstantial evidence, Young is entitled to more than a hypothetical jury. This Court should grant certiorari and reverse so that an untainted,

impartial jury may determine Young's guilt and judge the believability of the State's evidence against him.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and remand this case for a new trial.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2017.

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THE STATE,

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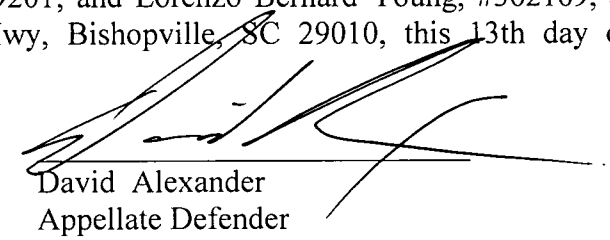
PETITIONER

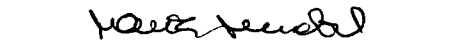
CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lorenzo Bernard Young, #362169, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 13th day of November, 2017.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 13th day of November, 2017.



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