

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2019-UP-272 (S.C. Ct. App. filed July 24, 2019)

THE STATE,

RESPONDENT,

V.

JOHN M. GHENT, JR.,

PETITIONER

APPENDIX

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INDEX

INDEX i

OPINION NO. 2019-UP-272 (FILED JULY 24, 2019).....1

PETITION FOR REHEARING (AUGUST 8, 2019).....3

ORDER DENYING PETITION FOR REHEARING (SEPTEMBER 19, 2019)8

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

John Marion Ghent, Jr., Appellant.

Appellate Case No. 2016-000643

Appeal From Lancaster County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2019-UP-272
Submitted June 3, 2019 – Filed July 24, 2019

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Caroline M. Scrantom, all of
Columbia; and Solicitor Randy E. Newman, Jr., of
Lancaster, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("This [c]ourt will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion."); *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support."); *State v. Cartwright*, 425 S.C. 81, 93, 819 S.E.2d 756, 762 (2018) ("[T]he trial court shall not provide a limiting instruction or otherwise comment to the jury on [suicide-attempt] evidence. The absence of a jury instruction shall in no manner foreclose the ability of the State and the defendant to make permissible jury arguments respecting the jury's consideration of the suicide-attempt evidence." (footnote omitted) (citation omitted)); *Stanko*, 402 S.C. at 264, 741 S.E.2d at 714 ("Errors, including erroneous jury instructions, are subject to a harmless error analysis."); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998))); *State v. Martucci*, 380 S.C. 232, 261, 669 S.E.2d 598, 614 (Ct. App. 2008) ("[A]n insubstantial error not affecting the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.").

AFFIRMED.¹

HUFF, THOMAS, and KONDUROS, JJ., concur.

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¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JOHN M. GHENT, JR.,

APPELLANT

APPELLATE CASE NO. 2016-000643

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2019-UP-272

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner respectfully requests rehearing because this Court may have overlooked the fact that petitioner is entitled to the benefit of State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018) which held that a jury instruction, such as the one in this case, that “evidence of a suicide attempt is probative of a defendant’s consciousness of guilt” was improper, and should not be given even in the rare case where suicide attempt evidence is admissible. Therefore, respectfully, at a minimum this Court should granted rehearing because it cannot be correctly held that the trial judge here did not abuse his discretion in giving this suicide evidence instruction. State v. John Marion Ghent, Jr., 2019-UP-272 (July 24, 2019) at p. 2.

Further, the forbidden suicide consciousness of guilt jury instruction was not harmless error.

As petitioner explained in his reply brief to this Court:

“The Brief of Respondent highlights why a jury instruction that “evidence of a suicide attempt is probative of the defendant’s consciousness of guilt” is so problematic since people are driven to suicide, and suicide attempts for a many reasons. R. 399, ll. 14-17. The state argues that: “Direct and circumstantial evidence links appellant’s admitted suicide attempt to the accusations which engendered the current convictions . . .” The state also argues that appellant attempted suicide “as a means of evading criminal responsibility for the act committed.” Brief of Respondent at 10.

The state, then pivots to urge that “appellant *staged a suicide attempt by making it appear* that he slit his wrists after the murder. The wounds were classified as abrasions requiring no medical treatment.” Brief of Respondent at 10.

The state then notes that “*alternatively*, appellant testified to the rationale that he ‘didn’t want to live without her,’ (R. 297, ll. 19-25), which permitted the jury to infer that appellant’s suicide attempt *resulted from despair* caused by an accidental death or otherwise unintended result. Appellant’s defense relied upon the evidence of a suicide attempt as a means of pleading that Elaine’s death *was accidental*.” Brief of Respondent at 11.

However, correctly urging that the jury could have determined appellant’s suicide attempt resulted from despair, and not a desire to kill himself to avoid going to jail, highlights the problem with the jury instruction that “evidence of a suicide attempt **is probative of the defendant’s consciousness of guilt.**” Brief of Respondent at 10; R. 399, ll. 14-17. (emphasis added).”

Reply brief at 3.

Further, there was evidence that petitioner talked to his daughter, Tabitha Reynolds, about killing himself for “weeks” before the decedent was killed. R. 56, ll. 14-24. Moreover, petitioner testified in his own defense, and he told the jurors he wanted to be sure his wife was actually going to leave him before he killed himself. “I didn’t want to live without her.” R. 296, l. 7 – 297, l. 25.

Petitioner, while explaining the stabbing was accidental, testified he wanted to kill himself after he accidentally killed his wife. Petitioner thought his decedent wife grabbed the knife at one point: “[A]nd then she grabbed ahold of my wrist and I was trying to get my hand away from her and my hand just slipped -- arm just slipped out of her hand then went straight into her chest. There was blood everywhere. I couldn’t stop her.” R. 298, l. 1 – 299, l. 7. Petitioner tried to stop the bleeding but he panicked. He laid his wife back down on the bed, went to get “some pills,” and he tried to cut his wrist. R. 299, l. 8 – 300, l. 18.

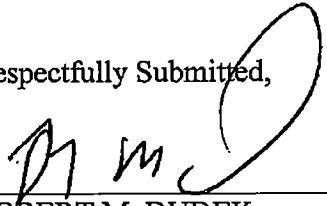
The jury in his case was charged also charged on voluntary manslaughter, involuntary voluntary manslaughter, and accident. Petitioner made this Court aware in his brief that “State v. Harold Cartwright, Appellate Case No. 2016-00005, which is scheduled to be orally argued on March 22, 2017, twelve days after the filing of this initial brief.” Brief at 10.

Finally, as petitioner also argued: “The jury instruction that the suicide attempt could be probative of consciousness of guilt was very prejudicial since accident is excusable in the law, and involuntary manslaughter is merely criminal negligence and not an intentional act.” Brief at 10. Petitioner was convicted of murder which is the killing of another human being with malice aforethought. See S.C. Code §16-3-10. The jury instruction in this case was not harmless error because at a minimum it was going to be confusing to the jury, and our Supreme Court in State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018), held jury instructions on suicide attempt evidence should not be given.

The present case is respectfully a textbook example of why a jury instruction that “evidence of a suicide attempt is probative of a defendant’s consciousness of guilt” should not be given. It simplistically and callously informs the jury that an attempt to commit suicide can be understood as consciousness of guilt, and a desire to avoid earthly punishment. Suicide is often

much more complicated than that as petitioner argued in his brief in this case, and our Supreme Court explained in State v. Cartwright, 425 S.C. 81, 819 S.E.2d 756 (2018). Rehearing should respectfully be granted.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 8th day of August, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

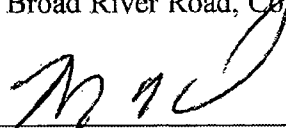
V.

JOHN M. GHENT, JR.,

APPELLANT

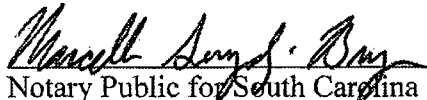
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Caroline M. Scrantom, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and John M. Ghent, Jr., #367453, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 8th day of August, 2019.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 8th day of August, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028

The South Carolina Court of Appeals

The State, Respondent,

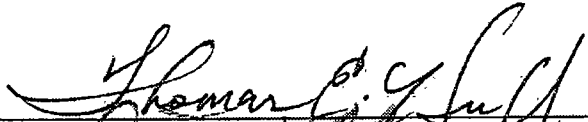

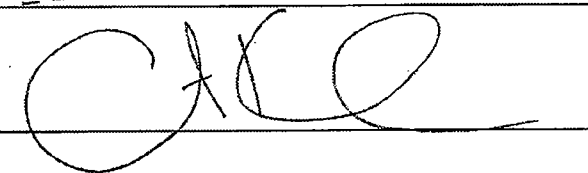
v.

John Marion Ghent, Jr., Appellant.

Appellate Case No. 2016-000643

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Randy E. Newman, Jr., Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Caroline M. Scrantom, Esquire

FILED

September 19, 2019

Handwritten initials

Melody Jane Brown, Esquire
The Honorable Brian M. Gibbons

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APPELLATE DEFENSE