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Jul 20 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2018-000022

THE STATE,

Respondent,

vs.

ADAM ROWELL,

Appellant.

PETITION FOR REHEARING

On July 7, 2021, this Court affirmed the convictions of Appellant for felony driving under the influence resulting in death and felony DUI resulting in great bodily injury. State v. Rowell, Opinion No. 5832 (S.C. Ct. App. filed July 7, 2021) (Shearhouse Adv. Sh. No. 23). This Court correctly affirmed Appellant's convictions on each of the four issues raised on appeal by Appellant. As to the first issue raised on appeal by Appellant, this Court held the trial judge did not abuse his discretion in admitting Sample A into evidence, because the State established a chain of custody as far as practicable given the circumstances of Appellant's case. While the State agrees with the holding of the Court that the trial judge did not abuse his discretion in admitting Sample A, the State asks for this Court to reconsider whether the State was required to prove a chain of custody for Sample A at all in light of the fact that Sample A was taken for medical rather than investigative purposes. On this limited issue, the State respectfully submits a Petition for Rehearing.

In Jamison v. Morris our Supreme Court considered whether expert testimony was properly admitted when the expert witness testified regarding a deceased driver's probable level of impairment based on a blood alcohol level test conducted by SLED. Jamison v. Morris, 385 S.C. 215, 226, 684 S.E.2d 168, 174 (2009). The Supreme Court held the trial judge erred in admitting the expert testimony because the expert's testimony was based on a blood sample analyzed by SLED that did not have an adequate chain of custody. Morris 385 S.C. at 227, 684 S.E.2d at 174. Because the sample was drawn for medical purposes but tested for investigative purposes, the Court held the sample was unreliable without a chain of custody. Id. However, citing to their opinion in Ex parte DHEC 350 S.C. 243, 565 S.E.2d 293 (2002), the Court ruled the sample would have been admissible had it been drawn and tested for medical purposes. Id. The Court provided the following rationale for its holding: "Here, we have a situation where a sample was drawn at a hospital for medical purposes but never tested. Had the hospital performed Carlos' BAL test as part of its medical treatment of him, the results would have been a part of Carlos' medical record. Under Ex parte DHEC, those results would be presumed reliable as a business record regardless of chain of custody." Id.

Here, this Court appropriately recognized "Sample A was collected for medical purposes to save Rowell's life and not for any investigative purpose, which makes it unlikely it was tampered with." State v. Rowell, Opinion No. 5832 (S.C. Ct. App. filed July 7, 2021) (Shearhouse Adv. Sh. No. 23 at 53). Indeed, because Sample A was taken and tested for medical purposes, the sample should be deemed trustworthy without a chain of custody being established because it was relied on for the diagnosis and treatment of Appellant. The mere fact that Sample A was subsequently introduced against Appellant in a criminal prosecution should not diminish its trustworthiness. Therefore, the State respectfully asks this Court to reconsider whether the

State was required to produce a chain of custody in light of the circumstances present in Appellant's case.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, and find that the State was not required to construct a chain of custody for Sample A because it was taken and tested for the purposes of medical diagnosis.

Respectfully submitted,

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PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This 20th day of July, 2021.



LEIGH ANN STONE
Legal Assistant

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Leigh Ann Stone

From: Leigh Ann Stone
Sent: Tuesday, July 20, 2021 2:04 PM
To: rauchwise@gmail.com
Cc: Scott Matthews; William Blicht; billygarrettjr@yahoo.com; carson@carsonhendersonlawfirm.com; jane@hmlawsc.com
Subject: The State v. Adam Rowell (2018-000022)
Attachments: ROWELL Adam - Petition for Rehearing - 2018-000022 (02648979xD2C78).PDF; ROWELL Adam - Cover Letter - Petition for Rehearing (02648980xD2C78).PDF

Good Afternoon Mr. Wise,

Attached please find a copy of the Petition of Rehearing in The State v. Adam Rowell (2018-000022) along with its cover letter. This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. In addition to this email, a hard copy will be placed in the mail.

If you will, please reply to confirm receipt of this email.

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