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Jan 05 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Travis Hines, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002632

ON WRIT OF CERTIORARI
Appeal From York County

Opinion No. 5877

Heard April 13, 2021 – Filed December 8, 2021

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Rules of Appellate Procedure, Travis Hines requests that this Court rehear this matter based upon the following:

1. The Court erred in holding that the video not shown to Travis Hines did not violate *Brady v. Maryland*, 373 U.S. 83 (1963). To have made this factual determination, this Court would have been required to have watched the entire video or videos and determined no *Brady* violation occurred. Mr. Hines has never argued the failure to permit him to watch the video violated *Brady*. As neither Mr. Hines or any of his lawyers have ever never seen the entire video, neither he, his original counsel, his appellate counsel nor this court can conclude that the failure

of the government to permit him to watch the video was a *Brady* violation. Mr. Hines has constantly contended that the failure to permit him to view the video or videos was a violation of Rule 5 of the South Carolina Rules of Criminal procedures. The requirements of Rule 5 include the word “shall,” which is mandatory. The “shall” also applies to the defendant and not his counsel. As such, a plea without viewing all the evidence against him cannot not be freely and voluntarily made and therefore is an unlawful and unconstitutional plea.

2. This Court erred in failing to recognize that this Court under Rule 202(f) of the South Carolina Rules of Evidence could take judicial notice of the Memorandum of Justice Jean Toal dated March 1, 2004. This document would further be admissible under Rule 902(2) and (5) of the South Carolina Rules of Evidence. A copy of the Memorandum is attached as it is not available on the South Carolina Supreme Court Judicial website.

3. This Court erred in sanctioning the ex parte decision of solicitors to withhold evidence at their sole discretion in violation of the letter and the spirit of Rule 5 of the South Carolina Rules of Criminal procedures. In so deciding, this Court failed to consider that the solicitors in South Carolina have the right under Rule 5(g) to seek an order of protection if they believe the disclosure required by Rule 5 would be harmful in some way. In the opinion, this Court now permits the solicitors, in their sole discretion, to withhold evidence from defendants without requiring them to seek a judicial finding as to the need to restrict the disclosure.

4. This Court erred in relying upon *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983). In *Hyman*, the trial judge found the testimony of the plea counsel credible when the counsel testified that Mr. Hyman would be satisfied with defense counsel viewing the video

without Mr. Hyman being present. No such testimony or finding exists in this case. Mr.

Wellborn testified Mr. Hines wanted to see the video and that he could not recommend his client enter a plea without seeing the video. App. at 13, ll 11 - 23; 38, ll 5 - 9.

5. This Court erred in failing to find the following statement by the Post Conviction Judge was without evidentiary support:

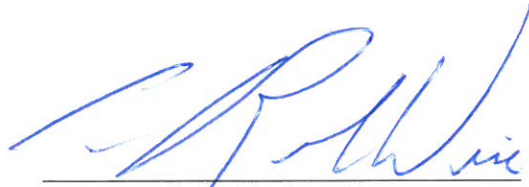
This Court finds that Counsel acted reasonably in advising Applicant to see the evidence before pleading guilty. Applicant has failed to show that Counsel was deficient in viewing the evidence in a timely manner as Counsel testified that he received and shared all discovery with Applicant including stills from the CI buy.
App. at 130

This finding ignores the testimony of Christopher Wellborn who stated, "I was not recommending that to my client at that time that he plead guilty without looking at the video." App. at 38, ll 7-7. He also stated, "We wanted to see the video." App. at 44, l 1-2. This testimony shows that, contrary to the findings of the Post Conviction Relief Judge, Mr. Wellborn did not receive all the evidence. Also, Mr. Wellborn also stated he only saw that portion of the video the State elected for him to see. App. at 39, ll 7-8; ll 17-18. Seeing a portion of the videos is not seeing all the evidence. Thus, Mr. Wellborn could not have shown Mr. Hines all the evidence as found by the Post Conviction Relief judge. All Mr. Wellborn could say was "Allegedly they were searched. They had no drugs on them." As Mr. Wellborn could only say "Allegedly they were searched." the alleged search of the informants was not on the video he was

shown. Whether the video actually shows the search of the informants is unknown.

5. This Court erred in finding Travis Hines waived his right to counsel. The record establishes that at the hearing to release Christopher Wellborn, Mr. Hines clearly wanted a attorney to represent him. He stated he would retain an attorney. App. at 115, ll 8 - 13. The “waiver” of counsel at the plea consisted of just two questions. The Court further erred in finding Mr. Hines waived his right to an attorney through the Plea Waiver Form. App. at 84-89. The plea record does not reflect Mr. Hines was asked about this form at his plea and therefore the plea judge could not make a determination that the form was freely and voluntarily signed. The form, at the bottom of page 87 of the Appendix, contains a statement that is factually not correct. The form states Mr. Hines has consulted with his attorney. This is simply incorrect or misleading at best. The plea judge should have been required to determine the voluntariness of the Plea Waiver Form.

January 5, 2022



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The Supreme Court of South Carolina

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MEMORANDUM

TO: All Solicitors.

FROM: Chief Justice Jean Hoefer Toal

RE: Plea Agreements and Discovery

DATE: March 1, 2004

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, R.I.D.E., Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

On a separate issue, apparently some magistrates are setting bonds a fier *ex parte* meetings with alleged victims. This is also unethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

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Hon. R. Lawton McIntosh, Circuit Court Judge

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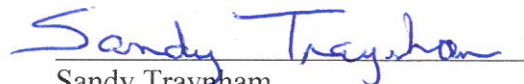
vs

The State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for Attorney for the
Petitioner in the above entitled case. That on January 5, 2022, I did send via e-mail, a copy of the
Petition for Rehearing to Michael michaelneubauer@scag.gov at the South Carolina Attorney
General Office.

January 5, 2022


Sandy Traynham
Secretary

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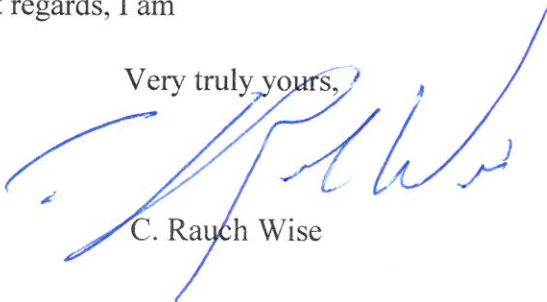
Re: Travis Hines v. State of South Carolina, Case No. 2017-002632

Dear Ms. Kitchings:

I am enclosing herewith for filing the Petition for Rehearing together with a copy of the Certificate of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt

cc Michael Jacob Neubauer