State of South Carolina

In the Court of Appeals

On Appeal from Lexington County, in the Court of William P. Keesley, Judge

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The State ——————— Respondent

vs.

Richard Jones ——————— Appellant

Case No. 2012-212542

Johnson Petition of Appellant Submitted Pro Se

Appellant
Richard F. Jones, Pro Se
#237649 KCI MB-16
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Table of Citations:

Issue No. 1

Did this Appeals Court commit plain error by failing to fully and lawfully address issues raised in Petitioner's Motion filed Feb. 27, 2013?

Issue No. 2

Were Solicitor Ross's misstatements of fact and law in the presence of the jury prejudicial and unlawful and was Judge's failure to address and give jury curative instruction plain error?

Issue No. 3

Were statements alledged to have been made to police by the defendant legally admissable at trial?

Issue No. 4

Does Appellant Counsel Pachak's Anders brief prove by ommisions and errors of fact that he failed to make a competent investigation of the facts and issues?

Argument Issue 1.

Consider Judge Cureton's Order of 4/5/13 which failed to address, give reasoning or cite law applicable to denial of petitioners motion. Petitioner raised four(4) alledged violations of rule and law, see same in record. Petitioner argues failure to compel attorneys to comply with clearly established law by failure to provide essential documents unlawfully prejudices his cause by denying necessary information needed to file a meaningful Johnson petition; the failure to compel the State Agency to provide constitutally mandated compliance denies Petitioner right to adhear to rules of court. Judges acts and or omissions of law and rule deny fair hearing right under Const. Amend VI. Carefully consider Court must enforce law and rules per Johnson v. U.S., 520 U.S. 461 (1997) and U.S. v. Wolfe, 245 F.3d 257 (3rd Cir. 2001) held deviation from legal rules is "clear", "obvious", plain error. Further also significant injury to cause of appellant by lack of enforcement.

Argument Issue 2.

Consider Sol. Ross's clear and blatant mistatements of law and fact, see Trial Transcript (T.T.) page 116 line 5 and page 117 line 2; Mr. Ross states, "If you are burned in a meth lab explosion on your property, you're involved." and adds, "you're guilty under statute." Statute § 44-53-0375 nor any other S.C. statute contains any allusion to being burned being relevent to guilt. State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (S.C. 1996) held must prove "dominion and control" and adds "mere presence of drugs is insufficient to establish possession". State v. Mongon, 326 S.C. 421, 468 S.E.2d 679 (S.C. App. 1996) held must prove "active participation". State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (S.C. App. 2002) held "Under an accomplice liability theory, a person must personally commit a crime or through

common design to aid, encourage or abet in the perpetration of the crime, this constitutes guilt as a principle."; finally State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (S.C app. 2007) held there must be some "overt act" to demonstrate "aid", "encouragement," or "abetting"

There are many other examples throughout the transcript of Sol. Ross's misleading and or purjurious statements, such as T.T. 125 line 25 thru page 126 line 1 where he, not only, leads witness into known falsehood but mistakes facts to jury, "Now, Mr. Harris, do you remember the day that Richard Jones' garage exploded?"; this lie continues throughout the trial, see T.T. page 394 line 12 of Solicitor's closing arguments, "blows up his garage." These are only two (2) examples of Mr. Ross's lies misstatements and exaggerations, there are many more. Notice Payton v. Woodford, 258 F.3d 905 (9th Cir. 2001) holding prosecutors can't misconstrue the law or see U.S. v. Johnson, 610 F.2d 194 (4th Cir. 1979) as to illegality of solicitors purposeful introduction of false information to the jury. The Solicitor's lies even had Judge Keesley confused, see T.T. 91 line 22-25 "Did anyone testify about whether the shed was in flames...?" The facts and evidence at trial prove there was no structural damage to the shed/garage/shop from explosion or fire, allowing such known and intentional falsehoods to be admitted was held unlawful in U.S. v. Forloma, 94 F.3d 91 (2nd Cir. 1996)

Consider Judge Keesley has duty to know the law and a legal responsibility to protect the defendant from unlawful jury influence by the solicitor. Note fair trial right under U.S. Const. Ament VI, Napue v. Illinois, 360 U.S. 264 (1959) knowingly admitting false statements of law and fact. These "plain errors", made on multiple occasions, were not only ignored by Judge Keesely, he goes so far as to aid and abet the solicitors unlawful acts by concealing them from the jury. See T.T. 392 line 6 thru page 393 line 8; then notice

continue lies by Solicitor on p394 line 12. Similarly, U.S.v. Wilson 168 F.3d 916 (6th Cir) held Judge derelict for failure to correct similar misstatement of fact and law. Note again no curitive statements were made by Judge Keesley for any of the solicitors repeated and intentional misinformation. Finally notice §16-17-410 "Conspiracy" could be applied, especially in view of Judges "overt act" in the covers and note U.S.v. Stitt, 250 F.3d 878 (4th Cir. 2001) as to errors being "clear", "obvious" and affecting substantial rights of the defendant.

Argument 3.

While this significant issue was much debated prior to and at trial there are many relevant and material facts, circumstances and law concerning statements alleged to have been made by the suspect and whether they were admissiable at trial that were not then considered.

Consider fact Ofc. Hamilton admits when he and three(3) other officers broke in to Mr. Jones residence and questioned him at gunpoint that there was insufficient evidence to arrest him, see T.T. page 75 lines 7-11. Note with the "expectation of privacy", "due process" and other criteria specified in S.C. law, a search warrant is, or is supposed to be, more difficult to obtain than an arrest warrant, see mandates in §17-13-140. Notice from their testimony none of the officers involved had any direct knowledge of the circumstances. Ofc. Marther, who signed affidavit had only hearsay info as to what had occured, saw some smoke and smelled "ether-type smell in the air.", he did not participate in "protective sweep". One of the criteria of a warrant is that it must be made from "personal knowledge" here there was none which would be sufficient for issuance of a search warrant. While Ofc. Mothers had no personal knowledge of what was observed on the "sweep" by other officers; it is clear from their testimony none of them observed anything overtly illegal or that could, standing alone be considered evidence of criminal activity. Warrant can not

on mere suspicion. Items seen could be seen in anyone's garage. So much time had passed for a "pursuit" claim; no exigent circumstances (note no EMS); whereas so much time had passed, no danger of escape or prevention of evidence destruction would apply. This lack of grounds lends reasonable doubt to the legality of the warrant.

Consider, the State, Judiciously, maintains this to be a Terry stop, but notice even Judge Keesley's own statement, T.T. page 93 line 23-24 "... it's a G.D. house. It's different in someones house." Solicitor cites U.S. v. Hargrove, 625 F.3d 170 (4th Cir 2010) as authority but Hargrove contains sugnificant differances. First, there, police had a vaild warrant, there was no forced entry and Mr. Hargrove was not half naked, burned over 25% of his body and in shock. More relevant are Fleming v. Collins 917 F.2d 850 (5th Cir. 1990) and U.S. v. Adams, 1 F.3d 1566 (11th Cir. 1993) which held that "gun point" is "inherantly coercive". Adams supra mentions "he was not told he could leave". In our case Mr Hamilton testified Mr. Jones was not free to leave and would have been detained. Consider Miranda was implicated by the "... objective circumstances of the situation from the perspective of a reasonable person in the suspects position."

Carefully notice; of the four(4) officers in the room during the questioning only Ofc. Hamilton mentions hearing anything about a "starter". Conflicting testimony has little presumptive weight. Notice, questioning was not recorded or even written down at the time of the incident.

Issue No. 4.

Petitioner avers Appellate Counsel Pachak was derelict in his filing of Anders, whereas the Petitioner, untrained in law has pointed out multiple effective defense issues, it shows counsel to be ineffective. Further consider direct proof in his Anders brief, see page 5 para. 2 line concerning the shed being on fire whereas the trial transcripe prove this false. None of the officers testified they

smell ether but rather an ether-like or chemical smell etc. Mr. Pachak assumes "manufacture of meth" but there is no evidence that any meth was manufactured only insufficient evidence of attempt. See 2nd para of page 5; lines 5 and 6, 3rd para line 4 and 5 and again on page 7 last para. It is clear that Solicitor's lies not only improperly swayed the jury but Mr. Pachak as well.

While appellate counsel cites relevent law as to evidence requirements he fails to point out what the "evidence" does and does not show. While various sources testified to some sort of explosion, there was no "expert" testimony submitted as to it's cause. Most garage/shop/shed type structures in america contain multiple flammables that can explode under certain conditions. There was also some testimony as to burns on Mr. Jones and Mr. Peacock but no medical testimony as to their cause was submitted. There was testimony and circumstantial evidence of three persons being at the scene, no print or DNA evidence was taken to show who was involved in what.

Certain purcursors to attempted meth production were found and photographed but not confiscated because they were not illegal. Consider more of the alleged components of alleged attempt were found in a central lab area. The ether cans were found in one room of the shop/garage/shed while the Sutafed © was found in another, no ammonium nitrite was found only packaging that at some time may have contained it. No lithium batteries, a necessary ingrediant was found and the other ingrediant in the drano © was found under the sink in the kitchen of the residence, as it would be in 90% of the homes in America.

What was not found? Per State expert Emily Homer, T.T.P. 326 line 2; "No. No controlled substances were found." No measuring, weighing, packaging or significant amounts of

money were found. The, much discussed, "Coke" bottle and supposed residue nor the alledged "smoking devise" A.K.A light bulb were not even submitted for testing. The "blood" evidence was never tested with Luminol or other scientific test nor was DNA done to see who's blood, if it even was blood. Non-perscription Sudafed was found in the evidence bag but not on the pyrex dish.

These facts make it clear the States case was all smoke, no pun intended, and mirrors containing no significant evidence of attemp to manufacture, no evidence of possession, only suspesion. With Judge Keesley's aid Mr. Ross through selective prosecution, half truth and outright lies was able to fool a legally uneducated and naive jury into believing there was sufficient evidence to convict. Any competent Judge would have observed the lack of essential evidence and given a directed verdict. Judge Keesley bias was clear from his "overt" act of aid and therefore "plain error" is shown on multiple levels.

Relief Request:

That this Court find "plain error" and mandate immediate release from custody of the Petitioner. In the alternative he requests en banc hearing by the full court due to Judge Cureton's failure to legal rule on prior motion, so done in the interest of a fair hearing on the merits. Further, Mr. Pachak be ordered to fully comply with applicable law and rebrief the entire case addressing all non-frivolous issues. That S.C.D.C. be Ordered to comply with constitutional mandates and that Mr. Pachak and trial counsel be compelled to turn over attorney/client files so that petitioner can participate meaningfully in his defense.

5/19/13 Signed: [signature]

Important Notice

Attn. Jenny A. Kitchings, C.O.C. S.C. Court of Appeals
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Dear Ms. Kitchings,

Please notice Order of Judge Jasper Cureton concerning Appellate Case No. 2012-212542 dated Filed 4/5/13 in which he states this Court will be responsible for making the necessary copies and getting them to the necessary parties. I ask that you also send Filed copy of this Johnson Petition to this petitioner. Thank you in advance for your help in this matter. I ask prompt return in view of my last request for return which took in excess of 90 days.

5/19/13

Sincerly,

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