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Oct 22 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Lexington County

The Honorable R. Knox McMahon, Trial Judge
The Honorable Brooks P. Goldsmith, Jr., PCR Judge

Appellate Case No. 2019-001436

QUINCY A. MCCANTS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

SECOND SUPPLEMENTAL APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

Final <u>Anders</u> Brief of Appellant.....	1
Appellant’s <u>Pro Se Anders</u> Brief.....	13
<u>State v. McCants</u> , Op. No. 2009-UP-194 (S.C. Ct. App. filed May 6, 2009) (per curiam)	23
Remittitur	26

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINCY MCCANTS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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APR 22 2008

SC Court of Appeals

WANDA H. CARTER
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT..	5
CONCLUSION.	8
PETITION TO BE RELIEVED AS COUNSEL...	9

TABLE OF AUTHORITIES

Cases

<u>State v. Cheeseboro</u> , 346 S.C. 526, 552 S.E 2d 300 (2001)	6
<u>State v. Jackson</u> , 302 S.C. 313, 396 S E 2d 101 (1990)	6, 7
<u>State v. Make</u> , 306 S.C. 355, 412 S E 2d 386 (1991).....	6, 7

Constitutional Provisions

S C. Const art 1 § 3	7
U.S. Const. amend. XIV	7

STATEMENT OF ISSUE ON APPEAL

The trial court erred in failing to suppress the state's fingerprint results in the case because the items from which the fingerprint results were obtained were not preserved as evidence for review by the defense.

STATEMENT OF THE CASE

Appellant Quincy Andre McCants was convicted of armed robbery during the October 2006 term of the Lexington County Courthouse before the Honorable R. Knox McMahon, Judge. Appellant was sentenced to imprisonment for a period of twenty-two years. Appellant appealed. This brief follows.

ARGUMENT

The trial court erred in failing to suppress the state's fingerprint results in the case because the items from which the fingerprint results were obtained were not preserved as evidence for review by the defense.

At trial, Chandra Wright testified that she was working as a cashier around 8:00 p.m. at Li'l Cricket on Sunset Boulevard in West Columbia on November 7, 2004, when a male came in and purchased a bag of potato chips. Wright stated that minutes later the male asked if he could exchange the chips for another bag. After responding in the affirmative, Wright stated the male put the first bag of chips back on the rack and obtained another bag and then got juice, and when he came to the counter to pay he pulled out a gun and said "give me the money" Wright followed instructions. The male took the money and fled. R. p. 167, line 16 – p. 174, line 10.

Investigators Brett Sims testified that he received the vehicle information and located appellant as a suspect and then interviewed him on January 5, 2005. R. p. 259, line 5 – p. 263, line 21. Investigator Sims testified that appellant denied that he committed the robbery. R. p. 269, lines 7 – 19. On January 7, 2005, Sims stated appellant gave a statement saying he did not recall or remember anything regarding this event. R. p. 349, lines 1 – 5.

Detective James Hickman testified that he pulled one latent fingerprint off the bag of potato chips on the counter (State's Exhibit #5 – picture of chip bag), and placed it on a card labeled State's Exhibit #9. R. p. 223, line 5 – p. 227, line 1. And with respect to the bag of chips from the rack (State's Exhibit #2), Hickman obtained latent prints from that bag and placed them on cards marked State's Exhibit #7 and #8. R. p. 227, lines 2 – 19; R. p. 236, lines 11 – 25. Note that on exhibit #5 (sour cream and onion potato chip bag) there was no

value to the print from that bag so there was no value to State's Exhibit #9. R. p. 249, lines 7 – 15 Fingerprint examiner Duane Johnson testified that he compared latent prints #7 and #8 (including prints found on the bag on the counter) with appellant's known prints and found that latent print #7 was appellant's left thumb print and latent print #8 was appellant's middle finger. R. p. 318, line 16 – p. 319, line 25

Prior to trial, the defense moved to suppress the fingerprint evidence on the ground that the state failed to preserve and keep the chip bags as evidence in the case because the bags were unavailable for the defense for testing in order to find exculpatory evidence or any other ground for challenge via independent testing. The bags were discarded by the state before review by the defense for no good reason. The state's argument that prints lifted from the bag were available for review by the defense missed the whole point R. p. 72, line 3 – p. 73, line 7, R. p. 62, line 2 – p. 70, line 4; R. p. 75, line 4 – p. 79, line 4. Appellant was deprived his due process right to examine the evidence presented against him (i.e. the actual chips bags) at trial. Additionally, appellant was prejudiced because the jury did not hear any other evidence linking appellant to the crime. The statements appellant gave to the police were not confessions to the crime. The court ruled that the fingerprint evidence in question was admissible R. p.79, lines 2 – 5.

The defense has a right to obtain the state's evidence for testing. State v. Make, 306 S.C. 355, 412 S.E.2d 386 (1991). The question became whether the officers acted in bad faith or whether the unavailable evidence had exculpatory value and there was no other means of obtaining the evidence. State v Jackson, 302 S C. 313, 396 S.E 2d 101 (1990). In State v. Cheeseboro, 346 S.C. 526, 552 S E 2d 300 (2001), the court held that there was no bad faith was connected to the destruction of the murder weapon because at the time of the

destruction it was labelled unclaimed property and not linked to the charges placed against that defendant in the case. See Arizona v. Youngblood where the court held that even though the sexual assault victim's clothing was not preserved, there was evidence indicating the police did not act in bad faith. In Jackson the Court held that because the DUI videotape was destroyed after the state dismissed the DUI charge, and because the state subsequently restored the DUI charge, then the videotape was clearly material to prosecuting the defendant, and no evidence of comparable value could have been obtained. This meant that the DUI videotape was very valuable and could not have been replaced. Compare State v. Make, *supra*, where the destroyed evidence was cocaine, so there was no real exculpatory value therein. The tape that was destroyed in Jackson was held invaluable.

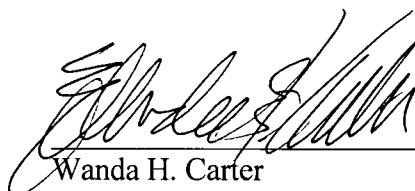
Here, the police acted in bad faith as it would have been relatively simple and part of the routine processing of the crime scene to collect the chip bags and save them for evidence in the same manner that other evidence is collected and saved at other crime scenes. Also, the missing evidence (chip bags) would be considered valuable, irreplaceable and material and there was certainly potential exculpatory value in the chip bags because other prints might have been found on the bag and if so, this presents reasonable doubt of appellant's guilt, especially since this was the only evidence linking appellant to the crime. Appellant's statements were not confessions.

The trial court erred in failing to suppress the state's fingerprint results in the case because the items from which the fingerprint results were obtained were not preserved as evidence for review by the defense in violation of the due process clause of the fourteenth amendment and article 1 § 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

April 22, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V

QUINCY MCCANTS,

APPELLANT

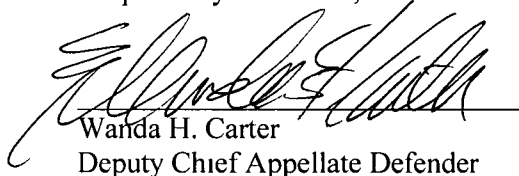
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quincy McCants states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on October 18, 2006, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Quincy McCants

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

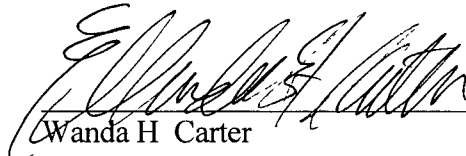
ATTORNEY FOR APPELLANT

April 22, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 22, 2008


Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

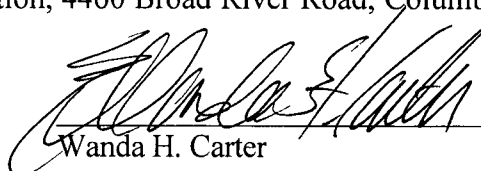
V.

QUINCY MCCANTS,

APPELLANT

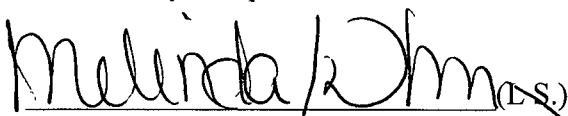
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Quincy McCants, #318280 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 22nd day of April, 2008.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of April, 2008.


Melinda L. Smith (L.S.)
Notary Public for South Carolina

My Commission Expires. November 16, 2008.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINCY MCCANTS,

APPELLANT.

APPELLANT'S PRO SE BRIEF

Quincy McCants, #318280
Appellant Pro Se
Broad River Correctional Inst.
4460 Broad River Road
Columbia, SC 29210

TABLE OF CONTENTS

Table of Contents.....	1
Table of Authorities.....	2
Statement of the Issue on Appeal.....	3
Statement of the Case.....	4
Argument.....	5
.....	6
Conclusion.....	7

TABLE OF AUTHORITIES

Cases

Neil v. Biggers, 409 U.S. 188 (1972).....	5
Mason v. Brathwaite, 432 U.S. 98.....	5
Stoval v. Denno, 388 U.S. 302 (1967).....	5
State v. Larue, 246 S.E.2d 890 (1978).....	5
United States v. Wade, 388 U.S. 218 (1967).....	5, 6

STATEMENT OF ISSUE ON APPEAL

The trial court erred in allowing Chandra Wright to make an in-court identification of Appellant when the evidence supported a finding that the identification of Appellant was the result of a prior unreliable and tainted identification.

STATEMENT OF THE CASE

Appellant agrees with the statement of the case submitted by appellate counsel in her Final Anders Brief, and by reference incorporates it herein.

ARGUMENT

The practice of showing criminal suspects singly for the purpose of identification has been condemned. Stoval v. Denno, 388 U.S. at 302 (1967). Reliability is the lynchpin in determining the admissibility of identification testimony. Mason v. Brathwaite, 432 U.S. 98, 114 (1977). The factors to be considered are enunciated in Neil v. Biggers, 409 U.S. 188, at 189 (1972).

It is fundamentally unfair to convict a defendant on the basis of unreliable identifications that are manufactured by police suggestiveness. As the Court noted in U.S. v. Wade, 388 U.S. 218, 240 (1967), "Suggestion can be created intentionally or unintentionally in many subtle ways," and "it is a matter of common experience that, once a witness has picked out the accused at the line-up, he is not likely to go back on his word later on, so in practice the issue of identity may (in the absence of other relevant evidence) for all practical purposes be determined there and then, before the trial." Wade, supra, at 229.

Further, "It is well settled that the burden is upon the state to show by clear and convincing evidence" that an in-court identification is "not tainted by suggestive police action." State v. Larue, 246 S.E.2d 890, 891 (1978).

In the instant case, the record reflects that the victim, Chandra Wright, was approached by someone in law enforcement shortly after the crime and shown a picture of the appellant. It was only after being shown the picture that Ms. Wright identified Appellant as the perpetrator of the crime, and the evidence

indicates that Appellant's picture was the only picture shown to Ms. Wright. The procedure of showing a single photo to Ms. Wright was unquestionably suggestive. It gave Ms. Wright the clear impression that police had already had someone they believed to be the perpetrator of the crime. And, as noted in Wade, supra, Ms. Wright would have felt compelled to stick with her initial identification of Appellant at any subsequent hearing or trial.

Appellant asserts the trial court's decision to allow Ms. Wright to make an in-court identification of him constituted error and resulted in a miscarriage of justice.

CONCLUSION

For the foregoing reason, Appellant's conviction should be reversed and his case remanded for a new trial.

Respectfully submitted,

S/ Quincy McCants

Quincy McCants, #318280

Broad River Correctional Inst.

4460 Broad River Road

Columbia, SC 29210

June 2, 2008

Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINCY MCCANTS,

APPELLANT.

CERTIFICATE OF SERVICE

Quincy McCants hereby certifies that he has served a copy of Appellant's Pro Se Brief upon the respondent by mailing a true copy to Sally W. Elliot, Esquire, Office of Attorney General, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, postage prepaid and with sufficient postage affixed thereto, through the United States Mail, this 2 day of June, 2008.

s/ Quincy McCants
Quincy McCants, Appellant

Sworn and Subscribed to before me

this 2 day of June, 2008.

Eugene P. [Signature]
Notary Public for South Carolina
My Commission Expires April 4, 2018
My Commission Expires: _____

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JUN 03 2008

SC Court of Appeals

June 2, 2008

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: The State v. Quincy McCants

Dear Mr. Richstad:

I received your letter dated May 8, 2008, informing me that I have 45 days to file a pro se brief in the above referenced case. Please find enclosed my pro se brief. I have served the respondent with a copy of same.

Your help with this matter is appreciated.

Sincerely,

s/ Quincy McCants

Quincy McCants, #318280

Broad River Correctional Inst.

4460 Broad River Road

Columbia, SC 29210

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JUN 03 2008

SC Court of Appeals

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

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

The State,

Respondent,

v.

Quincy McCants,

Appellant.

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Opinion No. 2009-UP-194
Submitted April 1, 2009 – Filed May 6, 2009

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Quincy McCants appeals his conviction for armed robbery and twenty-two year sentence. McCants's counsel argues the trial court erred in failing to suppress fingerprint evidence because the items from which the fingerprints were obtained were not preserved as evidence for review. McCants filed a pro se brief arguing the trial court erred in admitting the victim's in-court identification. After a thorough review of the record and both briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

SHORT, THOMAS, and GEATHERS, JJ., concur.

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



Case Tracking No. 2006-39299
No. 16502

APPEAL DISMISSED

The State of South Carolina

IN THE COURT OF APPEALS

Lexington County

The State,

Respondent,

v.

Quincy McCants,

Appellant.

PER CURIAM

Paul E. Short, Jr.

J.

Paul W. Thomas

J.

Jon Seatter

J.



The South Carolina Court of Appeals

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V CLAIRE ALLEN
DEPUTY CLERK

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May 22, 2009

REMITTITUR

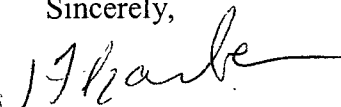
The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: The State v. McCants, Quincy
2006-GS-32-04674

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Jeanette F. Barber
Clerk of Court

JFB/lf

cc: Deputy Chief Appellate Defender Wanda H. Carter
Quincy McCants, #318280
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott