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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Jennifer B. McCoy, Circuit Court Judge

QUOTEAS S. NESBITT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000072

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUOTEAS SYLVESTER NESBITT,

APPELLANT

APPELLATE CASE NO. 2014-001851

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing a police officer to identify Appellant as the perpetrator where the officer was not a witness to the crime but was asked by fellow officers to identify Appellant in a grainy video of the shooting in violation of Appellant's right to due process of law?

STATEMENT OF THE CASE

On March 28, 2013, the Colleton County grand jury indicted Appellant for murder (2012-GS-15-663) and possession for a weapon during the commission of a violent crime (2012-GS-15-664). R. 608 – 609; R. 611 – R. 612. The state, represented by Tameaka Legette, called the case for trial on August 25, 2014 before the Honorable Perry M. Buckner, III, and a jury. Matthew Walker represented Appellant. R. 1. The jury found Appellant guilty on both counts. R. 594, lines 17-25. Judge Buckner sentenced Appellant to forty-five years' imprisonment for murder and to five years' imprisonment for the weapon. He ordered the sentences to run consecutively, resulting in a total of fifty years' imprisonment. R. 604, lines 9-23; R. 610; R. 613.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

In violation of Appellant's right to a fair trial and due process of law, the trial judge erred in allowing a police officer to identify Appellant as the perpetrator where the officer was not a witness to the crime but was asked by fellow officers to identify Appellant in a grainy video of the shooting.

Relevant facts

On the evening of September 6, 2012, many people, including Appellant, gathered at Chase Lounge, a local pool hall. Moray "Bobo" Holmes, the deceased, arrived, still dressed in his work clothes from logging all day. He grabbed a drink and left, promising to return. R. 417, line 2 – R. 418, line 25; R. 476, lines 3-23; R. 487, line 11 – R. 488, line 5. Later, the deceased and his wife, Renatta Holmes, return to Chase. R. 174, lines 19-20; R. 436, lines 4-24; R. 465, lines 4-6; R. 477, lines 5-11; R. 477, lines 18-20; R. 488, line 22 – R. 489, line 5. Renatta sat in the car talking to her cousin, Kenya Kelly, while the deceased walked around greeting his many friends and family members who were present. R. 179, lines 5-21; R. 190, line 22 – R. 193, line 15; R. 405, lines 11-18; R. 437, lines 5-12. The deceased stopped in the parking lot to speak with an unknown individual.[1] After the two spoke briefly, the deceased started walking away. The unknown individual shot the deceased twice in the back. State's Exhibit # 45.[2] The entire trial centered on the identity of the shooter. The prosecution had no physical evidence connecting Appellant to the

[1] Renatta Holmes, Brian Manigo, Kelvin Mitchell, Nicholas Williams, and Donald Odom claimed this unknown individual was Appellant. R. 179, line 21 – R. 180, line 4; R. 185, line 15 – R. 186, line 12; R. 186, lines 21-23; R. 437, lines 17-18; R. 438, lines 9-18; R. 443, lines 3-8; R. 465, lines 7-20; R. 477, line 20 – R. 478, line 1; R. 489, line 7 – R. 490, line 1; R. 492, line 25 – R. 493, line 8.

crime. In fact, the entire case rested upon the identification testimony of witnesses, about whom the prosecutor repeatedly apologized to the jury. Some of the witnesses had prior criminal records and some of the witnesses had pending charges. Many of the witnesses delayed talking to the police for years and others gave inconsistent statements. All of the witnesses were biased due to their familial relationship with the deceased. R. 116, lines 8-20; R. 546, line 14 – R. 547, line 9.

During pretrial proceedings, Appellant objected to testimony by Jason Chapman[3] identifying Appellant as the shooter. Chapman was not present during the actual shooting; rather, Chapman's identification was based on his watching the surveillance video from Chase. Although no faces were identifiable in the video, Chapman claimed that he could identify Appellant based on his mannerisms.

Chapman claimed he had known Appellant for eight or ten years based on his interactions with Appellant "in the street, in calls for service, where he resides, or the neighborhood he resides in is relatively close to the office." Chapman claimed that after patrolling the same streets for sixteen years, he knew most people. R. 51, lines 10-19. He estimated that he interacted with Appellant between fifty and one hundred times. R. 51, line 25 – R. 52, line 2. Based on these interactions, Chapman claimed he was familiar with Appellant's mannerisms:

> He never gave me an issue, as far as verbally. He was always cordial with me when we spoke. He liked to talk with his hands, often had his hands on his waist; not in a threatening gesture, just everybody has a quirk about them

---

[2] The video from the Chase Lounge was admitted as an exhibit during the pre-trial hearing and during the trial. The video has been transported to this Court for review as part of the Record on Appeal.

[3] At the time of the trial, Chapman worked for the Colleton County Sheriff's Office. R. 50, lines 22-23. At the time of the shooting, Chapman worked for the Walterboro Police Department. R. 50, lines 24-25.

> when they stand or walk, and he often stood a lot of times holding his pants with his hands. He had a slight gait when he walked, for lack of a better term; I'm not sure exactly how to explain it. But I don't know if he ever had an injury or not, but he's got a slight gait when he walks with a - - I guess it would be his right leg. I wouldn't really call it a limp, more of a gait. Like I said, he's actually very social when you interact with him. I don't think I ever had an issue where he was threatening towards me in any way.

R. 52, lines 3-20. Although Chapman worked for the Walterboro Police Department at the time of the shooting, which was being investigated by the Colleton County Sheriff's Office, Chapman was notified of the shooting and assisted in the investigation. R. 52, line 21 – R. 54, line 2. Part of Chapman's participation was assisting in locating Appellant, who was identified as a suspect. Ultimately, Appellant turned himself in to Chapman. R. 54, line 3 – R. 55, line 9.

About a week before Appellant's trial, all of the police officers involved in the case against Appellant met to prepare for trial. Chapman was the "only one present that had never seen the video." He "was asked if [he] thought [he] could identify [Appellant] from the video without any interaction or involvement from anybody else involved in the case." The video was played "to a certain point, as to not give away anybody's identity." Chapman "picked out who [he] believed was [Appellant], and was later informed that that was him based on the information they had on hand." R. 55, line 10 – R. 56, line 10; R. 62, line 11 – R. 63, line 6. Chapman claimed Appellant "was always pulling on his pants, he had a habit of standing with his hands on his waist. He had a gate [*sic*] that made it look somewhat like a slight limp to the right side." When the video was played, Chapman "watched everyone interact and mov[e] around in the video." "[T]he only person [he] saw that had the same height, weight, physical characteristics and mannerisms of Appellant was the person [he] identified." R. 56, lines 11-24.

Chapman readily admitted that identifying the shooter from the video based on facial features was impossible. However, Chapman claimed he could make an identification of Appellant "based on the fact that" he knew that "Appellant was present at the crime scene and the people walking around and interacting in that video, of the people that were there, the one [he] picked out was the only one, in [his] opinion, that had the mannerisms and the physical characteristics of Appellant." R. 57, lines 9-18; R. 62, lines 4-7; R. 63, lines 7-9. Specifically, Chapman was "asked out of the people that you had viewed in that video, do you see anyone that you would identify as [Appellant]." The only one that Chapman saw that had the same mannerisms as Appellant was the person he identified, who was the shooter. R. 60, line 6 – R. 61, line 14.

Appellant objected to the introduction of the identification testimony by Chapman. After noting that Chapman was not present at the scene, trial counsel argued "that the identification procedure outlined in the testimony today is equivalent to a single person show-up identification, which are [*sic*] disfavored in the law as being inherently suggestive." Trial counsel noted that Chapman was aware that Appellant had been charged with the crime and was the subject of the meeting he attended. Further, Chapman "was shown a video where he was expected to see [Appellant], and in his opinion, the person on the video was [Appellant]." Additionally, Appellant objected that Chapman's testimony "would be more prejudicial than probative" because the identification by law enforcement was being used to shore up the "shaky identification" testimony from the eyewitnesses. Further, Appellant argued the testimony was prejudicial because it suggested to the jury that

Appellant had engaged in prior criminal acts because of Chapman's claim that he had interacted with Appellant so frequently. R. 94, line 21 – R. 95, line 24.[4]

The state argued in favor of admissibility. According to the prosecutor, Chapman arrived at the meeting "have been told basically nothing about the case, except that it was a video in which he was being asked to watch to see if he could pick out anyone in the video, to include [Appellant]." Further, the prosecutor argued that Chapman had an opportunity to observe the video and an opportunity to witness Appellant. Due to Chapman's training, he had paid "particular attention" to Appellant "and how his gait is and how he walks and how he kind of waddles, along with the stance he typically takes." R. 96, line 7 – R. 97, line 2. Judge Buckner held Chapman's identification of Appellant as the individual in the video who shot the deceased was admissible finding it reliable based on the totality of the circumstances. R. 97, line 3 – R. 98, line 9.[5]

Discussion

A defendant may be deprived of his due process rights through an identification procedure that is unnecessarily suggestive and encourages irreparable mistaken identification. State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App. 1967) (citing Stovall v. Denno, 388 U.S. 293 (1967)). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification." Id. at 502-03, 589 S.E.2d at 784. If a suggestive out-of-court identification procedure created a very substantial likelihood of

[4] The suggestion that Appellant had a prior criminal record was reinforced by the lead investigator's testimony that she had known Appellant "for some years, working at the jail." R. 160, lines 19-21.

[5] Appellant renewed his objection to Chapman's identification testimony during the trial, preserving the objection for review on appeal. R. 352, lines 12-17.

irreparable misidentification, the in-court identification is not admissible. Manson v. Brathwaite, 432 U.S. 98 (1977); State v. Moore, 343 S.C. 282, 286, 540 S.E.2d 445, 447 (2000).

In Neil v. Biggers, 409 U.S. 188, 198 (1972), the United States Supreme Court articulated a set of factors by which a trial court judge should evaluate both out-of-court identifications and their subsequent use by a witness in court. Those factors include: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Id. at 199. The Court stated that the trial judge should look at the totality of the circumstances when evaluating the likelihood of misidentification. Id. at 196. "Reliability is the linchpin in determining admissibility of identification testimony" and the Biggers factors must be weighed against the "corrupting effect of the suggestive identification itself." Manson v. Braithwaite, 432 U.S. 98, 114 (1977).

Our courts have found some identification procedures patently suggestive. For example, in State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), our Supreme Court held a line-up procedure wherein three victims were in the same room, sitting within feet of each other, while observing photographic line-ups was blatantly unacceptable. Id. at 81-82, 600 S.E.2d at 527. Nevertheless, the Court found the identification was admissible based upon the totality of the circumstances. Those circumstances included the victims not conversing during the line-up and not being aware of whom the other victims selected, if anyone. The victims testified the observed the assailant from one minute to ten minutes and their prior

descriptions generally matched that of the person identified. All testified they were certain of their identifications, which were made two days after the incident. Id. at 83, 600 S.E.2d at 527.

Our Supreme Court held a show-up identification was unduly suggestive in Moore, supra. A witness observed two people exiting her neighbor's home when she knew the neighbor was away. She called the police and provided a general description of the men, primarily focused on the clothing. Id. at 285, 540 S.E.2d at 447. Ninety minutes later, officers took the witness to an area where to men were being detained. The witness positively identified the two men as the perpetrators. Her identification was based upon the clothing she observed. She admitted she had not really seen their faces earlier. Id. at 285-286, 540 S.E.2d at 447. As explained by the Court, "[s]ingle person show-ups are particularly disfavored in the law." Id. at 287, 540 S.E.2d at 448 (citing Stovall, 388 U.S. at 302 and State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct. App. 1993)). The procedure in Moore was unduly suggestive. Id. Further, the Court found the identification unreliable as a matter of law. In the case presented, the Court found the only factor with any reliability was the amount of time between the crime and the confrontation, which was ninety minutes. The other factors clearly outweighed that one where the witness observed the two perpetrators for a brief time at a significant distance, the degree of attention was not great, and the accuracy of her description was tenuous. Id. at 449, 540 S.E.2d at 290.

The identification procedure used by law enforcement to obtain Chapman's identification of Appellant reeks of suggestiveness. This type of identification procedure is at least as suggestive as a show-up identification procedure or single photograph identification procedure. Fellow officers told Chapman that Appellant was on the video

and asked Chapman to pick out Appellant from among the several people on the grainy video. Chapman knew the person he was supposed to select and approached the entire process with this in mind. This type of identification procedure is the epitome of suggestiveness.

Applying the Biggers, supra, factors to Chapman's identification of Appellant is nearly impossible because Chapman was not an eyewitness to the crime. However, applying the factors where possible reveals the unreliability of Chapman's identification of Appellant. Chapman had no opportunity to view the shooter at the time of the crime because he was not present. Although he had an opportunity to view the video of the shooting, the video is of very poor quality in terms of seeing individuals. The crime occurred in a parking lot at night. There are many cars and people and very little lighting. Although Chapman may have watched the video with a high degree of attention, no amount of attention could overcome the low quality of the video in terms of ability to make an identification of an individual. Chapman's professed high level of certainty of his identification is belied by his testimony that he could not see any facial features of the individuals on the video, his identification was based on purely mannerisms ubiquitous among many members of society – walking with weight shifted on one side and placing one's hands on his hips, and that he knew he was trying to find the person in the video who most resembled Appellant.[6] Based on a review of the suggestiveness of the procedure and the reliability factors, the trial judge erred in

[6] Because he was not an eyewitness, Chapman gave no prior description of the assailant and there was no time between the crime and the confrontation; therefore, these factors are not relevant for the analysis.

admitting Chapman's testimony, which served only to shore up the identification of testimony of the state's admittedly interested witnesses.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of June, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUOTEAS SYLVESTER NESBITT,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quoteas Sylvester Nesbitt states:

1. She is an 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 Perry M. Buckner, which was held on August 25-28, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Quoteas Sylvester Nesbitt.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of June, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUOTEAS SYLVESTER NESBITT,

APPELLANT

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Entire trial transcript dated August 25-28, 2014;
(2) State's #45 (DVD video surveillance at Chase);
(3) Court's Exhibit #3 (jury note);
(4) True–billed indictments (2012-GS-15-663 & -664); and
(5) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 9th, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 9, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUOTEAS SYLVESTER NESBITT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Quoteas Sylvester Nesbitt, #361169, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 9th day of June, 2015.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of June, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA)
)
RESPONDENT,)
)
Vs.)
)
QUOTEAS S. NESBITT, SCDC #361169)
)
APPELLANT.)

Case No.: 2014-001851

PRO SE BRIEF OF APPELLANT

"Trial court erred in allowing the testimony of Detective Chapman at trial identifying Appellate as the suspect in a crime scene video through mannerism," and his previous knowledge of the Appellant.

Prior to trial in this matter their were numerous of witnesses who were directly involved in the incident where they were present at the scene of the crime, giving corroborated identification evidence as to the defendant. Mr. Nesbitt being the alleged shooter of victim Moray Homes on September 6, 2012. The trial was centered around the identity of the accused, for the State could not produce any physical evidence before or during the trial. The State paraded a number of witnesses to come and give live testimony to the events which took place on September 6, 2012. Their identification was admissable due to the fact that they were actually present, or took part in what happened that day.

As to the in-court identification of Det. Chapman, his live testimony at trial should not have been allowed for he was not present at the scene, and trial counsel argued that the identification procedure outlined in his testimony was equivalent to a single person show-up identification, which are

[sic] disfavored in the law as being inherently suggestive.

At trial (Tr. p.95) Det. Chapman admitted that he had prior knowledge of the defendant Quoteas Nesbitt being the subject of the trial to be discussed. The video he was asked to view at this meeting was who he expected to see when shown the video of course. The person he identified in his opinion was Mr. Nesbitt. Once more this is equivalent to a single person show-up.

Additionally, Det. Chapman was not present when this particular incident occurred unlike those State witnesses who were, and was able to give direct evidence in this matter. In this capacity, is what makes the allowing of Det. Chapman's testimony by the trial court more prejudicial than probative, both in that it would be more of a suggestive identification and dealing with law enforcement their will be no reliable solid identification from other law enforcement presence. It's also prejudicial because it gives the jury the impression that Mr. Nesbitt has been engaged in prior bad acts by Det. Chapman admitting at trial (Tr. p.351, lines 15-21) that he knew this man between 8-10 years, and have had to interact with him between 50-100 times. Therefore, Det. Chapman's testimony as far as the identification is concerned was damaging as he was the one and only officer in the case allowed to give live identification testimony to Quoteas Nesbitt being the shooter in a video where no law enforcement could give a positive, or solid description as to the man identified therein.

Due process is violated when the identification procedure is so unnecessarily suggestive that it would result in an irreparable identification, which in turn would render the in-court identification inadmissible.

To determine whether an identification is reliable, it is necessary to consider the following factors: (1) the opportunity of the witness to view the

criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and confrontation.

These factors cannot be applied simply because Det. Chapman was never present at the scene of the crime when this shooting took place on September 6, 2012.

Trial court erred in allowing this piece of evidence in the case to the jury for it only prejudiced the accused by giving the jury the impression that the State was producing identification evidence beyond a reasonable doubt. An officer of the law that has admitted to being physically involved in other aspects of the case will be most likely viewed as giving an accurate account of events that took place when the shooting happened.

Det. Chapman's in-court identification was highly suggestive and unreliable in the case as it was still allowed by the trial court.

The trial judge erred in allowing the show-up identification evidence into the case in violation of the due process clause of the fourteenth amendment to the United States Constitution and Article 1 and 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, Appellant's conviction should be reversed and the case remanded to the Colleton County Court of General Sessions for a new trail.

Mr. Quoteas Nesbitt
Pro se

Pro se brief for Appellant raising the issue of the jurisdiction of General Sessions Court to convict on alleged properly established grand jury indictments.

Applicant would first establish that the faces of his indictments for murder (2012-GS-15-0663) and for possession of a weapon during the commission of a violent crime (2012-GS-15-0664) both state a convening date of March 28, 2013, the Colleton County grand jury indicted Applicant for these offenses.

Now, when we look closer into the indictment process of S.C. Code of Law court terms, General Sessions for Colleton County, shall be held at Watterboro according to the State of South Carolina's Statue [14-5-800] beginning on the second Monday in January for one wee, on the first Monday in April for two days, on the second Monday in June for one week and on the third Monday in September for one week. The crux of this matter is that Applicant Quoteas Nesbitt was never lawfully indicted by a grand jury of his peers, for each term is stipulated above and March 28, 2013, is dearly not in its proper terms.

This also reveals that the Court of General Sessions never had any legal jurisdiction to indict or hold trial in the case.

A procedural error as such screams a deficient performance by trial counsel for failing to move to squash the indictment before sworning of the jury. Trial and appellant counsel should have been well aware of the indictment convening terms as well as the State of South Carolina's Statue [14-5-800] surrounding the actual General Session terms for Colleton County.

A procedural error as such by the government is also a fundamental miscarriage of justice due to the grossly, shocking, and outrageous misconduct violates the universal sense of law and justice, which is a violation of Applicant's due process rights of the U.S. Constitution. Furthermore, this

same violation extends Applicant's [V Amendment] (No person shall be held to answer for a capital, or otherwise infamous crimes unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law).

This conduct is also a violation of Applicant's [XIV Amendment] (Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws... See S.C. Constitution Art. 1, § 2 and Art. 5, § 22 "One who demands and is refused the right to be tried for a crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictments are required may there after justly take the position that he has been deprived of life; liberty or property without due process of law in violation of the State Constitution.

When the indictment is presented and that accusation made that pleading filed, the accused has two (2) courses of procedures open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or waiving them, he may put in issue the truth of the accusation, and demand the judgement of his peers on the merits of the charge. When dealing with a procedural error as such it's always a question of the legality and sufficiency of the process from the State Grand Jury, which issued the indictment. However, we must analyze this case in light of Gentry and due regard for our renewed focus on the indictment as a notice document.

Code of Laws of South Carolina 1976
Constitution of South Carolina

[Art. V, § 22] The Grand Jury of each county and the State Grand Jury, as the General Assembly may establish by general law. It shall consist of

eighteen members, twelve of whom must agree in a matter before it can be submitted to the court. Each juror must be a resident of this state and have such other qualificatiens as the General Assembly may prescribe.

[Art. I, § 2] The privileges and immunities of citizens of this state and the United States under this constitution shall not be [abridged], nor shall any persen be deprived of life, liberty, property without due process of law, ner shall any persen be denied the equal protection of the law.

Procedural due process requires (1) adequate notice, (2) adequate opportunity for a hearing, (3) the right to introduce evidence, and (4) the right to confront and cross-examine witness. [Moore v Moore, 657 S.E.2d 743] Constitutional Law (key) 3879. Due process is flexible and calls for such procedural protection as the particular situation demands. [Brown v Malley, 546 S.E.2d 195] Constitutional Law (key) 3875. A party whose personal rights are to be affected by a personal judgment, must have a day in court or opportunity to be heard. A court has no jurisdiction to adjudicate such personal rights. [Brown v Malby, 546 S.E.2d 195]. Due process [encompasses] all rights which are of such standards of fairness and justice and includes procedural rights of citizens against government actions that threaten the denial of life, liberty or property. [Osburn-Matthews v Lobbly Partner, 505 S.E.2d 598] Constitutional Law (key) 3870. Due process of law means the common law and the statue law existing in this [state] at the adoption of the constitution, altogether they constituted the "body of law" and prescribe the course of justice to which a treeman is to be considered [amendable] in all times to come. [Stehmeyer v City Council of Charleston, 32 S.E.2d 322]. Also, other requirements of due process includes notice, and opportunity to be heard in a meaningful way, and judicial review. [505 S.E.2d 598] Constitutional Law (key) 3888 and 3879.

Therefore, reviewing the Constitution of South Carolina Code Ann, [§ 14-9-170] mandated the convening of the Grand Jury in relevant part.... The Grand Jury as drawn in accordance with the law for service upon the court of general sessions in each of the counties shall constitute the Grand Jury for the county court, and meet with the county court for each of its terms..

Accordingly, S.C. Code of Law Ann [§ 14-9-210], indictment for county court case by Grand Jury of court of general sessions SCRCRimP Rule 3(e)(1). The county solicitor shall prepare, and through the presiding judge of the court of general sessions submit to the Grand Jury while in attendance upon the court of general sessions bill of indictment in all cases pending in the county in which punishment may exceed a fine of one hundred dollars or imprisonment for thirty days. When such cases have not bee previously acted on, the Grand Jury shall act there on and report its action to the presiding judge of the county court at its next ensuing term. All cases in which bill of indictments are so found shall stand for trial by the county court as through found by the Grand Jury while in attendance upon the county court.

Applicant also contends that general sessions have jurisdiction over all criminal offenses, so not only didn't the indictment go through a constituted legal Grand Jury, but Applicants trial which proceeded on August 25th - August 28th, 2014, was illegally held outside of Colleton County general sessions schedule terms of court [§ 14-5-800] which is understood in law as [a kangaroo of court] - meaning (1) a self appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or periodical. (2) A court or tribunal characterized by unauthorized or irregular procedure esp. as to render a tape proceeding impossible. (3) [A sham legal proceeding] is the type of conduct we have from public officials who are a part of this type of unacceptable misconduct [§ 16-17-735].

Code 1976 § 16-17-735 exempts no persons impersonating officials or law enforcement officers false asserting jurisdiction, authority of law, remedies. (A) It is unlawful for person to impersonate state or local officials or employee or a law enforcement officer in connection with a sham legal process. A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if knowing that his conduct is illegal...

> (1) Subjects another to arrest, detention, search, seizure, mistreatment dispossession assessment, lien, or other infringements of personal or property right, or
>
> (2) denies or impedes another in the exercise or enjoyment or any right, privilege, power, or immunity.

(B) It is unlawful for a person to assent authority of state law in connection with a sham legal process. A person violating the provision of this section is guilty of misdemeanor, and upon conviction must be fined not more than two thousand five hundred dollars ($2,500.) or imprisonment not more than a year or both.

(C) It is unlawful for a person to act without authority under state law as a Supreme Court justice a court of appeal judge, a circuit court judge, a master-in-equality, a family court judge, a probate court, a magistrate, a clerk of court or register of deeds, a commissioned notary public, or other authorized officials in determining a controversy adjudicating the rights or interest of others, or signing a document as though authorized by state law. A person violating the provision of this subsection is guilty of a misdemeanor and upon conviction must be fined not more than two thousand five hundred dollars or imprisonment not more than one hear or both.

> (3) Sham legal process means the issuance, display, delivery, distribution, reliance on a lawful authority, or other use of an instrument that is not lawfully issued whether or not the instrument is produced for inspection or actually exist, which purport to;

(A) Be a summon, subpoena judgement, lien, arrest warrant, search warrant, or other order of a court of this state, a law enforcement officer, or a legislative, executive, or administration agency established by state law.

(B) Assert jurisdiction, or authority over or determine or adjudicate the legal requilable status, rights, duties, power, or privileges of persons or property.

(C) Require or authorize the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

> (4) Lawfully issued means adopted, issued, or rendered in accordance with the applicable status, rules, regulations, and ordinances of the United States, a state, an agency or political subdivision of a state....

Applicant submits that trial counsel and appellant counsel's performance in specific regards to the indictment for murder and possession of a firearm during the commission of a violent and criminal offense, performance fell well below an objective standard of reasonableness under prevailing professional norms as they were not functioning as the counsel guaranteed the defendant by the IV Amendment. Counsel's deficient performance prejudiced Applicant when the jury was mislead into believing that Quoteas Nesbitt was legally indicted when Applicant clearly was not. This therefore render both counsel ineffective for failing to move to have the illegal indictment squashed failing to rebut at trial before the jury was sworn, and on direct appeal for not raising on brief the issue. Evans v State, 611 S.E.2d 510, and U.S. v Bolton, 893 F.2d 894.

Applicant asserts that his conviction is not based on a lawfully, and sworn to indictment by his peers, and additionally in respect of a court that has not jurisdiction over are void and it would be a grossly, miscarriage of justice for claim to go uncorrected. This very illegacy is tantamount to a

aggravated kidnapping; and is a bar to all prosecution, in accordance to the constitution of the United States. Moreover, this conduct by the government is a criminal offense of kidnapping in itself. Hamilton v McCotter, 272 F.2d 171 (1985).

In conclusion, Applicant respectfully demands the Supreme Court of appeals to vacate his sentence, dismiss indictment, and release the Applicant from the custody of the respondent for the Applicant has been taken out of society against S.C. Code and statues of the State and the United States constitution....

Respectfully submitted,

Mr. Quoteas Nesbitt, #361169
Pro se
Lee C.I. - F5 A171
990 Wisacky Highway
Bishopville, SC 29010

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA)
)
RESPONDENT,)
)
Vs.)
)
QUOTEAS S. NESBITT, SCDC #361169)
)
APPELLANT.)

Case No.: 2014-001851

C E R T I F I C A T E
O F
S E R V I C E

The undersigned Applicant hereby certifies that a true copy of this pro-se brief of Appellant and designation of matter and record on appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201, and a copy of pro-se brief of Appellant and designation of matter and record on appeal have been served on Quoteas Sylvester Nesbitt, #361169, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, S.C. 29010, this _____ day of July 2015.

Mr. Quoteas Nesbitt, #361169
Pro se
Lee C.I. - F5 A171
990 Wisacky Highway
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Quoteas Sylvester Nesbitt, Appellant.

Appellate Case No. 2014-001851

Appeal From Colleton County
Perry M. Buckner, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-098
Submitted January 1, 2016 – Filed March 2, 2016

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Donald J. Zelenka, both of Columbia, for Respondent.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 18, 2016

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: The State v. Quoteas Sylvester Nesbitt
Lower Court Case No. 2012GS1500663, 2012GS1500664
Appellate Case No. 2014-001851

Dear Clerk of Court:

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

The following exhibit filed in this case is being returned to you:

State's Exhibit #45 - Video Surveillance at Chase

Please sign and return the enclosed copy of this letter acknowleding receipt of this item.

Reciept Acknowledgment -(please print)

Name:_____ Date:_____

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Quoteas Sylvester Nesbitt, 361169
Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Donald J. Zelenka, Esquire