

The South Carolina Court of Appeals

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MAR 20 2023

SC Court of Appeals

State of South Carolina)

South Carolina Court of Appeals)

Gregory D. Daniels # 297449)

Appellant)

VS)

State of South Carolina)

South Carolina Court
of Appeals

Appellate Case #
2021-001-298

Original Brief and
Designation of the
Matter

Comes now through this Court the Appellant
respectfully proceeding pro se the request the entry
for a New judgement pursuant ruling of a motion filed
with the Court of Common Pleas Twelfth Judicial Circuit.
Motion for a New trial of which was dismissed
by the Honorable Judge D. Craig Brown, on October
27th 2021. (Civil Case Action # 2013-CP-210280)
Appellant Case # (2015-00 2033),

Procedural History

(1) Appellant was convicted of Murder and Possession of a weapon charges during the commission of a violent crime on about April 14, 2010.

(2) The South Carolina Supreme Court, in opinion number 27180 filed October 10, 2012 affirmed Appellant's conviction.

(3) Appellant filed an action for Post Conviction relief on February 1, 2013.

(4) Post Conviction was denied by order dated June 8, 2015 by the Honorable Judge D. Craig Brown.

(5) Appellant's Rule 59(e) motion was also denied by order dated August 5, 2015 by Honorable Judge D. Craig Brown.

(6) Petition for Writ of Certiorari was denied by the South Carolina Court of Appeals by order dated August 18, 2018.

(7) Appellant filed a motion for a New Trial with the Florence County Clerk of Courts office on or about September, 10, 2021. The procedural history in this case is important in deciding this motion.

(8) The bases of the Appellants motion for a New Trial filed on or about September 10, 2021 are as follows.

I. Discovery of the Failure to disclose the proffer

Agreement of States key witness Andrea Bradley.

II. Prosecutorial misconduct by failing to press investigators

on this case to give all exculpatory evidence to the

defense.

III. Improper Arguments made by prosecution.

IV. False Evidence hearsay statements lies from witnesses or false testimony.

V. Asserting Facts not into Evidence

VI. Original motion for the Appellant was the

Rule 29(b) Newly Discovered Evidence of Appellants lawyer
at trial suffering from a serious illness (cancer)

which brings questionable doubt to the capability to
practice criminal justice in the legal field.

Support of the Facts

(1) Discovery of the Failure to disclose Proffer Agreement of States key witness Andrea Bradley.

Under the Rules of Court and the Constitution of The United States Everyone facing trial is entitled to a Fair and Impartial hearing or trial. Under the Constitution anyone facing trial must be presented with all discovery evidence to be presented before a jury of 12 not to exclude any exculpatory evidence that may result in favor of the defense. It is clear from the record from Appellants trial that a Brady violation occurred when the defense was not given a copy of the Proffer Agreement until the 4th day into trial.

Submitted into evidence as Plaintiffs exhibit #20 the copy of the Proffer Agreement ~~dated~~ received by the Public Defenders Office April 14th, 2010. Four days

into Appellant's Trial. Appellant ASK at this time the courts permission to have this exhibit marked as exhibit #1 to establish the burden and fact of proof when the proffer was given to the defense/Appellant. Appellant would also like to bring to the courts discretion of these other factors that support the arguments that the state was allowed time to disclose this evidence that was already known by local investigators handling this case. Due to the way the prosecution and investigators acted for two years. The Appellant was being detained from September, 10, 2008 until the date of his trial April 10, 2010. During this time the Appellant had no knowledge of witness Andrea Bradley and his then girlfriend / mother of his kids being witnesses to his case for the state. In which the Appellant feels that was a point in trial where his ability to make a decision to possibly take a no contest plea and not go to trial due to circumstances of

testimony. Coming from a State and Federal Informant whom the state and Government look at it as a good deal for the state only to find out that there is a proffer signed with the government only to receive leniency for his cooperation to a supposed confession made by the Appellant while in the house of informant. However this witness gave not one, not two, not three, but there is four statements given to investigators in this case only to bring to the Courts and Appellants attention the inconsistencies of testimony and statements. Appellant hates to sound like someone who's trying to question the bench or try the Courts patience however in order to establish the burden the evidence at hand has to be viewed in light of the Constitution of the United States. Appellant attempted to have these statements of this witness submitted to the record to show and establish the burden of this witnesses credibility of an informant. However the lower Court and both the Supreme Courts rulings to harmless error due to the overwhelming proof of guilt.

Appellant finds himself stuck with trying to convince this Court that this evidence is important to show that there were 2 other Federal Inmates whom were willing to give their testimony as to rumors they've heard about the case but no one could say that they knew for sure. Here's the important fact involving this issue. The Appellant was in the Florence County Detention Center for almost two years. During both the years of 2008-2009 this lay witness nor his girlfriend / mother of two didn't come forward with any information on this case. Lead Investigator admits to making prosecution Mr. John Teperinger aware of the fact that he spoke with Andrea Bradley and to the knowledge of Mr. Bradley signing a proffer from which this information came from Bradley's Attorney. This occurred during the testimony of both the lead investigator and prosecution withheld facts to this case that there lay witness did sign a proffer Agreement and a possible chance of the Federal Government giving this witness leniency for his testimony. This brings the Appellant to the Court's attention to not ignore the clear and convincing evidence that shows

that both the State and Investigators on this case did have knowledge of the proffer Agreement before the Defendants trial and timely enough matter to disclose to the Defense before trial.

(2) Prosecutorial misconduct by failing to press investigators on this case to give all exculpatory evidence to the defense.

Under the Constitution of the United States all discovery and Brady material is supposed to be disclosed to the defense before anyone facing capital crime stands trial. All motion or discovery material containing evidence against any Defendant shall be turned over to the prosecution from Investigators involved in this case. (Failure to do so may result in a finding of prosecutorial misconduct / Brady violation.

(1) During Appellants time being detained in the custody of the Florence County Detention Center Investigators failed to provide both prosecution and Defense a copy of the discovery Evidence to include proffer Agreement of lay witness Andrea Bradley.

(2) During Appellant's Post-Conviction hearing the Lead Investigator admits to having spoken to Andrea Bradley's Attorney and the knowledge about the proffer Agreement and also admitting to knowledge of the possibility of the witness receiving leniency for his cooperation with the state's investigation. However in February of 2010 this key witness Andrea Bradley comes forward with his information dealing with the murder of the victim Corey Byrd and some alleged confession between the Appellant and himself months before the murder occurs and again in the presence of his then girlfriend / mother of his two children without any evidence to support. There was testimony given by the girlfriend only to find out that this witness only heard this information from her boyfriend / father of her two children. Mr. Bradley testified to a phone call from the Appellant to supposedly taken place during the early morning hours after the murder. Phone records show that there was no such call. The Constitution states that in order to charge a citizen of a crime you must prove all elements of the crime to a jury. There is testimony given at the Appellant's Post-Conviction hearing

by the alleged person (Garry Bostic) whom hired the Appellant to Commit this crime whom gave testimony that he was asked about this case by investigators and to his then Attorney Mr. Johnny Ethridge Set up an interview between himself and Investigators concerning this case only to reveal Mr. Bostic saying that he had no involvement in this case or any knowledge of any payment to the Appellant for the alleged Hit for Hire. See testimony from Post Conviction hearing Gary Bostic, and Johnny Ethridge.

(3) Improper Closing Arguments made by Prosecution

Transcripts from trial pages # 568-570 He had to do the job Garry Bostic had already paid him \$500. He was out of money that's what Andrea Bradley told you when he followed Corey Byrd from that house around 4:30, 4:45 when Corey Byrd was walking to meet Tiesha Brown. It all adds up He killed a man and walked off Malboro Street and got into a van with Garry Bostic. The man who wants Corey Byrd dead. Paid for it to be done. Who paid Gregory Daniels \$500 already probably told him the job needed to be done if you want the rest of the money.

But you are firmly convinced beyond a reasonable doubt
he did it there is no other answer in this case (Please
find him guilty) Also facts that show that the charge
of the Appellate as written in the warrants are
possession of a weapon during commission of a violent
crime / murder question to the court is, if I'm
standing trial for murder and your case law states
it's the states burden to prove guilt beyond a reasonable
doubt. In the Appellants case there's plenty of doubt
so much doubt that the state presented 2 different
theories of Hit for Hire before jurors. which created
doubt before the jury. A crucial and critical question
from jurors that couldn't be answered and the conclusion
of this question would have established that the Appellant
was not in the area when the victim and others
left the party / Cookout. It may seem not important to
the court but Appellant without an alibi it's very
important. Even the states theory or the Supreme Courts
ruling to the overwhelming proof of guilt due to the
Appellant writing letters to his then girlfriend whom
the state used as a witness however the letters
were redacted. See testimony of Shavonne Gas, Gabriel Peterson and
Ryan Evans.

Asserting Facts not into Evidence

(4) Appellant is charged with Murder.

Hit for Hire is the evidence that was presented to the jury. Informant Andrea Bradley told Investigators that Garry Bostic paid the Appellant \$500 before the murder and \$500 after. There's no evidence to prove that there was a payment to the Appellant from Garry Bostic only the testimony of this informant to whom gave four different statements to Investigators. The prosecution put this theory on record during trial and post conviction only for Garry Bostic to testify at PCR hearing along with his lawyers at the time Johnny Ethridge. Mr. Bostic gave a sworn Affidavit as to not having anything to do with this situation or the murder of Corey Byrd. The State proceeded to trial with this theory of hit for hire but stated on record both the prosecution and Investigators saw no reason to charge Garry Bostic with anything. Quoted by Investigator Compton (I just didn't have enough evidence to prove Garry had anything to do with this.) Quoted by prosecutor Mr. John Feitinger

(my focuss was to convict Gregory Daniels for the murder.) see PCR transcripts of the Appellant.

4) To support the Facts not into Evidence Prosecution in Appellants case persuaded with two theories in the trial of Appellant (1) Murder - reason Argument at the Cookout. (2) Hit for Hire over a drug deal going bad. The Appellant would now ask of this court to allow the Sworn Affidavit to be admitted as evidence as exhibit # 3 to establish and prove the burden to this Court.

(5) The Appellant feels that his conviction was unconstitutional due to the charge to jurors being Murder but the theory of this crime by prosecution was hit for hire.

(1) To show support for the Evidence on this matter in conclusion the only person convicted and serving a Natural Life Sentence for this crime is the Appellant.

Rules of Court in Both Federal and state that when dealing with Hit for Hire both the person whom committed the crime and the person whom made the Contract for the Hit are Both by law intitled to imprisonment. See case law that Appellant has submitted to Support facts. Also Closing Arguments by the Bench Honorable Judge Thomas Russo to the only reason seen for this occurring is Hit for Hire. See Closing Comments for sentencing by Judge Russo from trial.

Conclusion to this issue is there was a total of 3 Federal informants from the Government that were all in the Florence County Detention Center. (1) Reginald Coleman whom gave a statement about a rumor on the streets that Garry Bostic and his lil Brother AKA. Lil Body put a hit out on Corey Byrd. (2) Ventrez Shantay Davis also gave a statement that rumors were that G-man did the hit for Garry Bostic. (3) Andrea Bradley gave four different statements to investigators and all statements were different versions of the events that lead to a supposedly confession. Prosecution admits to no evidence to convict Garry Bostic but all evidence was there to convict or tri Appellant.

II False testimony hearsay statements lies from State witnesses or false testimony.

- (1) Tiesha Brown - whereabouts when shots fired Albi during Crime
- (2) Brittany Fludd - Time left party and whom left with herself and Tiesha
- (3) Andrea Bradley - Testimony as to admittance to committing the crime statements given to investigators.
- (4) Jasmine Barrett - Testimony to not being in the room with the Appellant and witness Andrea Bradley.
- (5) Gabriel Peterson - Testimony to seeing the Appellant in the area when leaving the Residence of the Party / Cookout. See the testimony from trial and statements given to investigators.

III Original Motion Filed Rule 29(b) Newly Discovered Evidence of the Appellant's trial lawyer suffering from a serious illness such as cancer and the capability to still practice criminal law. Attached marked as exhibit #2 is the original motion filed with the twelfth circuit court. The Honorable Judge D. Craig Brown made the decision to dismiss the motion due to a timely filing on the matters. Under newly discovered evidence. (1) Ruling on motion not correct under this rule 29(b). (2) Appellant would like to bring to this court's discretion with the fact that the Appellant's case would be the first case to be dealing with deceased Council. Therefore there's no case law to support any ruling as to the ineffective assistance of counsel allegations. However with all due respect to the bench as to the reputation of its colleges and forefathers. However the constitution

States that all Defendants in order to establish proper law and the upholding the Constitution of the United States there has to be some type of rules dealing with these circumstances. In which it's required to meet the Strickland vs Washington standard I understand the reputation at the Bar and to uphold the respect of a fellow Colleague or Brother of the Judicial System. However the Strickland vs. Washington Standard requires to show what your Attorney didn't do to satisfy or establish a trial strategy. As to what the Attorney did or didn't do; reason for the strategy and reason for not using or bringing to the Courts attention why a decision not to discuss certain discovery or subpoena to witness for the Defense. (Gary Bostic) Reputational testimony from anyone whom only worked with Counsel in his career not on the Appellant's case. If there was only one lawyer appointed to handle the Appellant's case, how can the Court assume that the Counsel

For the Appellate viewed all discovery and talked to Garry Bostic as witness for Appellate. Counsel and Appellate are the only two have talked about the Appellate's case during the years of (2008-2010) Client Lawyer Contract.

Table of Authorities

Hiatt vs State 381, S.C. 622, 674, S.E. 2d 491 (2009)
Ingle vs State 398, S.C. 467, 470, 569, S.E. 2d. 401, 402 (2002)
Roseboro vs State 317, S.C. 292, 294, 454, S.E. 2d. 312, 313 (1995)
Stokes vs State 308, S.C. 546, 419, S.E. 2d 778 (1992)
Roseboro, Septa.
Hounds vs State. 380, S.C. 454, 670, S.E. 2d. 646 (2008)
Daniels, 401 S.C. 251, 260, 737, S.E. 2d. 473, 478
Player v Thompson 258, S.C. 600, 609-10, 193 S.E. 2d.
531, 535, 1972
Watson v Wall 239 S.C. 109, 121, S.E. 2d. 427 (1961)
Banister v. State, 333 S.C. 298, 509, S.E. 2d. 807, (1999)
Pauling v State 331 S.C. 606, 503, S.E. 2d 468 (1998).
Clover v State 318 S.C. 486, 458, S.E. 2d. 538, (1995)

Constitutional Provisions

U.S. Const. amend XIV

U.S. Const. amend IV

U.S. Const. amend III

Berger v. United States 295 U.S. 78, 88, 55 S.Ct. 629
633 (1935)

Conclusion

Appellant respectfully comes before this Court asking for relief on the above matter asking the Court to consider the facts into Evidence and all exhibits being submitted to Establish the Burden of Proof required. Therefore the Appellate ask of this Court to review the evidence provided and reverse and grant of a New trial on the evidence that shows that the trial of the Appellate was not fair and impartial and Due process was denied.

The Misconduct occurred during the admittance from both lead Investigator and Prosecution Mr. Timothy Wade Compton and Mr. John Jeperinger from the State.

This Day of March

9th 2023

Respectfully Submitted

Gregory D. Daniels #297449

Gregory D. Daniels

State of South Carolina)
South Carolina Court of Appeals)

Appellant)

Gregory D. Daniels #297449)

v.)

State of South Carolina)

In The South Carolina Court
Of Appeals

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AFFIDAVIT

MAR 20 2023

SC Court of Appeals

By mailing

Docket # 2021-001-298

Personally appeared the Appellant who states that he served the Defendants with a copy of the Notice of Motion and ~~Initial Brief~~ Filed by mail; return receipt requested in the United States Mail, with proper postage attached on March 9th 2023. Addressed as follows:

South Carolina Court of

Appeals

Jenny Abbott Kitchings, Clerk

Post Office Box 11629

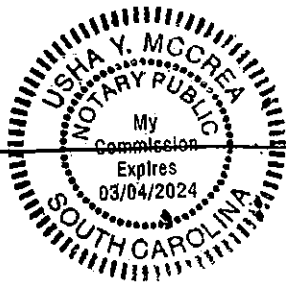
Columbia S.C. 29211

Sworn before me on this day 9th
OF March, 2023

Notary Public of Service

Usha Mc Crea

My Commission Expires



Respectfully

Gregory P. Daniels

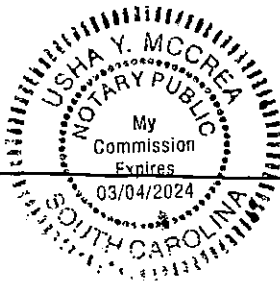
Gregory P. Daniels

Certificate of Notary

I Usha McCrea Notary Public do hereby
Certify that Gregory D. Daniels whose acknowledgment
is being taken personally appeared before me on
this day and knowledge the due execution of
the foregoing instrument witness my hand and
official seal day of March 9th 2023.

My Commission expires

Usha McCrea
Signature of Notary



State of South Carolina
South Carolina Court of Appeals

Appellant

Gregory D. Daniels # 297449

v

State of South Carolina

In The South Carolina
Court of Appeals

AFFIDAVIT

By Mailing

Docket # 2021-001-298
RECEIVED

MAR 20 2023

SC Court of Appeals

Personally appeared before me the Appellant who states
that he served the Defendants with a copy of the
Notice of Motion and Initial Brief filed by mail,
return receipt requested in the United States mail,
with proper postage attached on March 9th 2023.
Addressed as follows,

Allen Wilson Attorney General

P.O. Box 11549

Columbia - S.C. 29211

Sworn before me on this day 9th

OF March, 2023

Notary Public OF Service

Usha M. Crea

My Commission Expires





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APR 14 2010

PUBLIC DEFENDER'S OFFICE
BY *[Signature]*

Exhibit #1

U.S. Department of Justice
United States Attorney
District of South Carolina

PLAINTIFF'S EXHIBIT
20
KJS 4-14-10

Wachovia Building
Suite 508
1441 Main Street
Columbia, SC 29201
(803) 529-3000
FAX (803) 254-2012

131 Meeting Street
Suite 200
Post Office Box 978
Charleston, SC 29402
(843) 727-4381
FAX (843) 727-4443

John L. McMillan Federal
Building, Room 222
401 W. Evans Street
Post Office Box 1567
Florence, SC 29503
(843) 665-6688
FAX (843) 678-8809

105 N. Spring Street
Suite 200
Post Office Box 10067
Greenville, SC 29603
(864) 282-2100
FAX (864) 233-3158

Reply to: Florence

January 20, 2010

John M. Ervin, III, Esquire
[Redacted]
Darlington, SC 29540

RE: Andre Marquise Bradley

Dear Mr. Ervin:

The following constitutes the proffer agreement between the Attorneys for the Government and Andre Marquise Bradley, hereinafter referred to as "Client."

PROFFER AGREEMENT

The purpose of Client making a Proffer is to provide the Government with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others.

THIS IS NOT A COOPERATION AGREEMENT. Client has agreed to provide the Government with statements and information, and to respond to questions so that the Government may evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the Government does not agree to make a motion for downward departure on the Client's behalf or to enter into a cooperation agreement, plea agreement, immunity or non-prosecutive agreement. The Government makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the United States Attorney's Office for the District of South Carolina and federal law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning all unlawful activities. Also, Client understands that Client must fully disclose and provide truthful information to Government including any books, papers, or documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will, at the sole election to the Government,

John M. Ervin, III, Esquire

January 20, 2010

Page 2

cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on Client's part:

(1) the Government may file any and all charges known to the Government in the appropriate district; and

(2) the Government may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges, including perjury. Client accepts this provision being fully advised that under Fed.R.Evid. 410, statements made by Client pursuant to this Agreement would not ordinarily be admissible in any criminal proceedings including perjury and making false statements unless the statements were made under oath, on the record, and in the presence of counsel.

Client agrees to submit to polygraph examination(s) by any qualified polygraph examiner should Client be requested to do so. Failure to pass to the satisfaction of the Government any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the Government may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.

Provided Client is truthful as described above, remaining terms of the Agreement are as follows:

1. No statements made or other information provided by Client during this Proffer or discussion will be used against Client in any criminal or civil case except as provided herein.

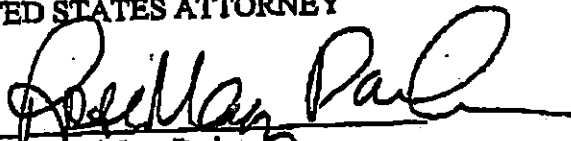
2. The Government may make derivative use of and may pursue any investigation leads suggested by any statements made or other information provided by Client for the purpose of obtaining other evidence which may be used in a prosecution of Client. This is necessary to prevent the Government from having to prove that evidence it would introduce at any future trial is not tainted by any statements made or other information provided by Client during this Proffer.

3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially different from any statements made or other information provided during this Proffer, the Government may cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised *qua sponte* by the District Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.


John M. Ervin, III, Esquire
January 20, 2010
Page 4

that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

W. WALTER WILKINS
UNITED STATES ATTORNEY

By: 
Rose Mary Parham
Assistant U.S. Attorney

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:


ANDRE MARCHIE BRADLEY

1/20/10
Date


JOHN M. ERVIN, III

Exhibit
2

STATE OF SOUTH CAROLINA,

County of Florence)

)

)

STATE OF South Carolina /

)

Plaintiff)

v.)

)

Gregory D. Daniels)

Defendant)

In the Court of General
Sessions

Docket #

Notice and motion for
New Trial Based on
After-Discovered Evidence
Pursuant to Rule 29(b)

Comes now the Defendant, and moves before this
Court for a new trial based upon after discovered Evidence
Pursuant to a rule 29(b) S.C.R.C.

Procedural History

The Petitioner is presently incarcerated in the South Carolina
Department of Corrections pursuant orders of commitment of the
Florence County Clerk of Court. The Florence County
Grand Jury Indicted the Petitioner in April of 2009 for
Murder and possession of a weapon during commission of a violent
Crime.

G-5-21427, Counts (1+2) Attorney Jack W. Lawson Sr. Esquire, represented the Petitioner. April 16, 2010 A jury convicted the Petitioner as Indicted. The Honorable Thomas A. Russo sentenced Petitioner to life in Prison for Murder Concurrent (5) years for a weapons possession. Defendant filed a timely notice of appeal. State v. Daniels 401 S.C. 251, 731 S.E. 2d. (2012). The remittur was returned October 24, (2012) In which the defendant has now after his appeals found out that there are missing briefs. On February 1, 2013, the Defendant filed an application for Post Conviction Relief. Defendant through counsel filed a motion to amend adding (13) ineffective assistance of Counsel Claims and also (1) ineffective assistance Counsel of appellate Counsel. The State filed a return on or about September 17, 2013, On September 22, 2014, Petitioner through Counsel filed an Amendment to application for Post Conviction Relief. Pursuant Rule 15(b). An Evidentiary hearing was set for October 6, 2014, On September 29, 2014, Respondents filed a motion for continuance and motion for Discovery. App. 704, 704 On September 30, 2014 Petitioner through Counsel, submitted a motion in opposition to Respondents request for a continuance. App. 704 On October 6, 2014, a motion hearing was held in front of the Honorable Edgar W. Dickson.

Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondants were represented by J. Croom Hunter Esquire, Assistant Attorney General. After hearing both parties the Honorable Edgar W. Dickson made the decision to grant the Respondants Continuance but set the hearing date at the choice of Petitioners Attorney and that this hearing was to take a full day. However as you can see that this order was not carried out as ordered by Honorable Edgar W. Dickson. However Judge D. Craig Brown stopped the hearing because of himself having somewhere to be at 4:00 p.m. The Court granted Respondants request for limited discovery this order was issued on October 22, 2014 which was filed on October 30, 2014 App-739.

An Evidentiary hearing was conducted at the Florence County Courthouse on April 14th and 17th of 2015 in front of Honorable D. Craig Brown. App. 745 Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondants were represented by J. Croom Hunter, Assistant Attorney General and John Thomas, Assistant Attorney General. Petitioner was called to the stand along with the following witnesses on his behalf Tristan Shaffer, Esquire, Garry Bostic, Johnny Ethridge Esquire, Andrew Williams

and Pete Skidmore. The Respondants called the following witnesses; Lieutenant Timothy Wade Compton, Grayson Smith, Esquire and John Deperinger Assistant Solicitor of the Twelfth Circuit. Petitioner attempted to admit 31 exhibits. Respondants admitted one exhibit. At the conclusion of hearing, Honorable D. Craig Brown instructed the parties to prepare proposed orders. Following the submission of proposed orders and order of dismissal was issued by the Honorable D. Craig Brown on June 8, 2015 and filed on June 10, 2015. App. p. 168.

On June 25, 2015 the petitioner timely filed a motion pursuant Rule 59(e) & (f), SCRPC App. p. 1200. Respondant filed a return on or about June 30, 2015 App. p. 1331. The Honorable D. Craig Brown issued an order of denial on August 5, 2015 which was filed on August 24, 2015. App. 1236. An appeal to the South Carolina Supreme Court was timely filed for writ of certiorari. The petitioner was denied on his writ of certiorari. The petitioner filed an application for Federal Habeas Corpus in the Fourth Circuit U.S. District of South Carolina that was denied see 5:18-cv-03064-RMG Daniels vs. Warden of Lee Correctional Institution. Case Number 40 (R+R) Docket number 29 as the order of the Court and Grants Respondants motion for...

Summary Judgment Docket # 21. The Court Denies the Petitioners Petition for writ of habeas corpus 28 U.S.C. § 2254 and Denies Certificate of Appealability signed by Honorable Richard M. Gergal on 8/6/2019.

Argument

(1) After discovered evidence the Defense Counsel was incompetent due to illness of cancer.

Petitioner brings this motion for new trial based on After Discovered Evidence pursuant to Rule 29(b) F.R.C.P., A motion based on after discovered Evidence must be made (1) year after the date of actual discovery of the Evidence by the or after the date when the evidence could have been ascertained by exercise of able diligence. To prevail on a motion for a new trial based on after discovered Evidence. A Defendant must show (1) the evidence is such as to ~~would~~ probably change the result if a new trial is granted, (2) the evidence has been discovered since trial. (3) the evidence could not have been discovered ~~prior~~ to trial by exercise of due diligence;

A defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since trial (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not nearly cumulative or impeaching. State v. Neels 333 S.C. 134, 508 S.E. 2d. 857 (S.C. 1998) Criminal Key 938 (11).

Counsel for Petitioner was appointed by the Public Defenders Office in the Florence City-County Complex at 180 N. Tiby Street. to represent him on the charges of Murder and Possession of a weapon during Commission of a Violent Crime. Approximately 6-9 months after Petitioner was found guilty of both charges and sentenced to life in prison + 5 years for the weapons charge. Attorney for the Petitioner made it clear on record that Jack Lawson Jr. Esquire passed away due to his battle to Cancer at this Evidentiary Post Conviction Relief hearing. Due to the exercise of diligence ~~and~~ researching his case Petitioner could not

have discovered this prior to or at trial as Counsel was not privy in disclosing this most personal or intimate information to Petitioner

Petitioner Asserts that a person six to nine months from death of Cancer would in law, be deemed, medically incompetent to represent a person in Court on a Capital offense, As such a person would certainly suffer from Memory loss and other related ailments caused by damaged brain tissue.

Petitioner Further Asserts that Counsel's incompetence ~~greatly~~ affected the outcome of his trial. Petitioner uses the trial strategy of defense Counsel in trial transcripts that clearly show that the Counsel for Petitioner had a strong defense for DNA but didn't pursue the issue along with several other issues dealing with Cellphone illegally searched and seized, from clearly putting up a defense or proper defense for witnesses whom testified. Also the Defense Counsel failed to disclose all discovery to Petitioner and proceeded to trial without a proper defense against witnesses also the proper arguments at Jackson V Dero hearing.

In Spann v. State, 279 S.C. 399, 308 S.E. 2d. 518

(1983), the Court held that order to prevail on a new trial Motion, Petitioner must show that the after discovered evidence is such that it would probably change the result if a new trial was granted.

(1) Incapacity proceedings, The purpose of the incapacity proceedings shall be to determine whether the lawyer suffers from a physical or mental condition that renders the lawyer ability to practice law. (2) Proceedings involving the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings. The purpose of such proceedings shall be to determine whether rather the lawyer suffers from a physical or mental condition that renders the lawyer unable to participate in a disciplinary investigation or of assisting in the defense of formal proceedings pursuant to this rule. The petitioner has the right to the proof that an investigation was conducted by the bar to assure according to this law that Attorney Jack W. Lawson was competent and that this illness didn't cause or effect the decisions made at Petitioners trial.

Conclusion

Therefore the Defendant named in the above case respectfully ask of this court to grant his motion and remand and vacate the sentence of this court pending a New trial

1st Notice

This day of January 7, 2020

Respectfully Submitted

Gregory D. Daniels #297449

Gregory D. Daniels

Second Notice

This day of February 26th, 2020

I ~~Debra Estrada~~ Notary Public do hereby
Certify that Gregory D. Daniels whose acknowledgement
is being taken personally appeared before me on
this day and acknowledged the due execution of
the foregoing instrument witness my hand and
Official Seal day of October 2020

Debra Estrada
Signature of Notary

My Commission expires
3/3/2024

FILED
2020 OCT 16 P 12: 22
DORIS FOLIOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
OF COURT RECORD
FLORENCE COUNTY, S.C.

- II. The lower court erred in failing to make a finding of ineffective assistance and prosecutorial misconduct due to the allegations raised and testimony offered regarding Gary Bostic.

By way of his Amendment, Petitioner made the following allegation:

Ineffective assistance of trial counsel for failure to conduct an independent investigation and properly prepare Applicant's case for trial. Ineffective assistance of trial counsel for failure to call witnesses at trial. Specifically, failure to interview Gary Bostic and subpoena him for trial, which would have resulted in the discovery of a Brady violation and/or prosecutorial misconduct for failing to disclose the law enforcement interview of Gary Bostic. See attached Affidavit of Gary Bostic, Transcript pp. 598, Ins. 22-25. Alternatively, prosecutorial misconduct and/or newly discovered evidence of a Brady violation regarding the failure of the State to disclose the law enforcement interview of Gary Bostic.

App. p. 695.

In support of this allegation, an affidavit of Gary Bostic dated September 15, 2014, was attached to the Amendment, which stated:

1. I affirm that I was interviewed by law enforcement regarding the murder of Corey L. Byrd on September 5, 2008.
2. I affirm that I was not contacted by Jack Lawson, Esquire, or anyone on behalf of Gregory D. Daniels prior to the trial held on April 12-16, 2010.
3. I affirm that I was not notified about the trial held on April 12-16, 2010 nor was I transported as a witness to the Florence County Courthouse.
4. I affirm that I am willing to testify to the above information.

App. p. 698.

At the evidentiary hearing, Gary Bostic was called to the stand. App. p. 768. He affirmed the information contained in his Affidavit. App. 773-4. He further explained that law enforcement spoke with him about the murder investigation of Corey Byrd. App. pp. 770-71. He told them he was not involved, and he heard nothing further from any of the parties. App. p. 771. He explained that he received probation for a charge involving an allegation of shooting at Corey Byrd. App. p. 770. He acknowledged that he had read through the trial transcript and was

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Gregory D Daniels #297449
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29010

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MAR 20 2023

SC Court of Appeals

The South Carolina Court of
Appeals

V. Claire Allen, Chief Deputy Clerk

1220 Senate Street

Columbia, South Carolina

29201