

The State Of South Carolina In The Supreme Court

S.C. SUPREME COURT
JUN 16 2023

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Kyndra Howell
v.
The State

Appellate Case No:
2023-001229

The Appellant Submits
this brief by order of
the court for review
for certiorari

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Statement of Fact

Question(s) Presented

Appellant's Brief

Proof of Service

The 5th Amendment U.S.C.A. A person is presumed innocent of a crime until proven guilty.

The Indirect evidence, circumstantial evidence based upon presumptions and inference from certain facts which leans towards a particular conclusion and that was the solicitor's Theory and the theory of the Investigator, but the (camera's) and eye witness testimony of the Co-defendant again, Frie's the (Appellant).

Because the 5th Amendment U.S.C.A rights can not be violated, this shows the Conspiracy and entrapment was acts done under color of State law.

The acts of the Investigator and solicitor were acts done in their each official and individual capacity as after Ego's of the State while operating in their each official and represented character.

The State did not have the subject-matter jurisdiction over the (Appellant) to have her detained for murder, concealed weapon, kidnapping, and robbery.

The charge should have been accessory after the fact of murder, robbery because she was given \$40.00 dollars by co-defendant.

The solicitor had the appellant illegally and unlawfully detained on these charges.

Appellate Defense attorney was prejudice, Bias and grossly ineffective for failing to submit an arguable Brief.

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14TH Amendment U.S.C.A.

Prosecution misconduct concealed mitigating factors,
Delayed defeat of Indictment Entrapment in Lieu
of Conspiracy + Concealment.

Statement of Fact

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Ground (1) TT - page 2: line 2-3

The solicitor stated on page 2 line 2-3
The state conceded at Trial that "petitioner
was not present" at the location where the
(Decedent) was shot and killed.

TT - page 2 - line 4 → Prosecutor stated
It nonetheless proceeded und the (Hand
of one) "Is the (Hand of All)" Theory of
Accomplice Liability:

TT - page 2 - line 14 → App. 100.15-101.19
Officer went to (petitioner's) house on July
3rd, 2012 and questioned her.

TT - page 2 - line 15 → Petitioner told officer that the
(Decedent) had called her multiple times on July 1st,
2012

TT page 2 - line 16 → And sought to have sex with her
in exchange for money. "Petitioner" did not accept
the offer for sex and did not see him again:

App. 190 #22-23

Codefendant gave open court testimony in
addition with a formal sworn written statement
Freeing the "Appellant" of the crime.

2 TT-page 2-line 19 → On July 3rd 2012 - Kimberly, Petitioner, friends went to Anderson.

TT-page 2-line 20 → Sheriff. officer

She told Investigator that (Petitioner) had called her multiple times, on the night of (July 1st 2012), and said they were holding (CJ), the (decedent) hostage in the bedroom. See App. 186.1.21-187, 1.11: See → App. 118 1.15, 119, 1.6.] Theory "Indirect Evidence" based on hearsay evidence.

TT-page 3-line 3 → However, the officer noticed that the house had (3) security cameras mounted out front.

TT-page 3-line 4 → Consequently, Law Enforcement contacted.

TT-page 3-line 5 → The landlord, who owned the residence, learned that the cameras recorded

TT page 3-line 6 → A (DVR Box) that was stored in a closet inside the home. See → App. 191, 1.3 -193, 123

TT page 3-line 7 → Search Warrant for (Petitioner's) Resident

TT page 3-line 8 → Seized the (DVR Box) that contained the recorded surveillance footage. (App. 193. 1.26-191 1 194.15,

TT page 3-line 9 → Investigator Danny Barton - reviewed the footage in his office and "claimed" that it showed petitioner

TT page 3-line 10 → and Decedent entering petitioner house on the afternoon of July 1st 2012 See → App. 194. 1.16-195.6.

TT page 4-line 7 → Blantt, claimed that none of his charges had been reduced. See → (App. 130 11 9-2)

The Final Conclusion.

Page 4-TT- (App. 492, 1.3-493, 1)

The (Co-defendant) was used to entrap the (petitioner); However, The Testimony from the codefendant actually free's the petitioner / appellant in this case at bar; consequently, to that issue, the electronic Device "The camera's" The (DV12 Box), also free's the (Appellant) of the murder.

The Investigator and the solicitor used the Co-defendant to enhance and convict the (Appellant) as accomplice yet the (Prosecutor) and Investigator chose to indict the Appellant instead of arranging a (De novo) hearing. De novo hearing is to determine what facts and charges has to be dismissed against her.

The Solicitor Indicted the Appellant in violation of the 4th, 5th, and 14th Amendment. U.S.C.A

Presentment is a written accusation made by the "Grand Jury". It instructs the Prosecutor to "Issue and Indictment" against the accused.

The distinct difference is - A grand jury bases its findings on evidence present to them for review. Yet, the solicitor issues an indictment against the (Appellant) is by and through a chief solicitor, to a Grand Jury.

A De novo hearing and or a Preliminary hearing in a criminal case, takes place after and indictment and before the trial.

The State of South Carolina In The Supreme Court

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Exhibit A

Kyndra Howell
V.
The State of South
Carolina Respondent

Case No: 2022-001229
Motion For A New Trial
S.C.A.C.R. Rule 60
Affidavit of Service

The "Appellant" files this motion pursuant to
S.C.A.C.R. Rule 60 (b).

A motion For A New Trial

6TH Amendment U.S.C.A

14TH Amendment, U.S.C.A.

Ineffective Assistant of Appellate

Defense Counsel. Prosecution Misconduct

Concealed Discovery Evidence to Entrap

the "Appellant" for the Murder of the deceased

The conviction is and was based on Prosecution
misconduct.

x Kyndra Howell
x K.H. Howell

Sworn To And Subscribe before me
on this 12th DAY of June 2023

Notary Public For The State of South Carolina
Keiji O Clark

My Commission Expires / February 10, 2023

The State of South Carolina In The Supreme Court

Exhibit B

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Kyndra Howell
V.
The State

Case No: 2022-001229
Motion to Set Aside
The Judgement
S.C.R.C.P. SC.R.C.R.59@
Affidant of Service

The (Appellant) files this motion to Set Aside The Judgement

The sentence is excessive.
Actual innocence of the alleged crime.

x Kyndra Howell
x K. J. Howell

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12th day of June 2023
Notary Public for the State of South Carolina

x Keyzi O'Leary

My commission expires / February 10, 2023

In the Supreme Court of South Carolina

Appellate Defense Counsel
Ineffective Assistance of Counsel
6th Amendment U.S.C.A

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Exhibit B

Kyndra Howell

Case No: 2022-001229

v

Affidant of Service

The State of South Carolina

The Appellant states that - Appellate Defense attorney (Ms. Lara M. Caudy) failed to present an arguable appeal Brief and was prejudice against her.

For A first Defense: 6th Amendment. U.S.C.A

The Appellant states that Appellate Counsel must raise arguable issue or withdraw. Moreover, Counsel's failure to raise any arguable issue in the (Appellate Brief) created a presumption of prejudice that satisfied the prejudice prong of a 6th Amendment claim. The Appellant Counsel (Ms. Lara M. Caudy) has displayed "constitutionally deficient" representation under the 6th Amendment. U.S.C.A.

The Appellant in this case at bar has been essentially left without Counsel in Direct Appeal. Quoting -> Delgado - V - F.3d. (1999). WL 86688 (AA9-CAL) -> See also in Ezell - V - State. 345 S.C. 312, 548 S.E. 2d. 852. (2001) The Supreme Court ruled or found that the appropriate remedy for "Ineffective Assistance" of Appellate Counsel is a New Trial Id.

x K. Howell
x Kyndra Howell

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Notary Public for the State of South Carolina

x Kyri O'Carroll

My Commission Expires / February 10, 2023

Exhibit C

Letn Amendment U.S.C.A. (Trial Counsel) Falsely Represented the Appellant in this case at bar.

For A First Defense:

Trial Counsel was ineffective when he failed to file a (denovo hearing) on the merits of dismissing the following charges:

- I. Motion To Dismiss Weapon charge
- II. Motion To Dismiss Robbery charge
- III. motion To Dismiss Kidnapping charge
- IV. Motion To Dismiss murder charge

The Denovo Hearing was based on the eye witness account of the co-defendants statements made to (investigator Mr. Danny Burton). See: Trial transcripts: page 2, 3, and 4. Where the co-defendant informed investigator Mr. Danny Burton that the appellant did not shoot, rob, or kidnap the deceased. See investigator Mr. Danny Burton TT. page 3 - line 4 where the DVR Box See - (App. 492, 1.3-493, 1) page 4. The Electronic Device Files the appellant of the above charges. → See page 2 - line 14 → App. 100. 1.5-101.19 → see surveillance footage (App. 193, 1.26-191 1, 194.15) See → App. 186. 1.21-187, 1.11: See → App. 118, 1.15, 119, 1.6.

For A second Defense:

Trial Counsel was ineffective for taking the Appellant's case to a Jury.

For A Third Defense:

Trial Counsel was ineffective for failing to charge the Jury on the charge of Accessory after the fact of kidnapping, Armed Robbery, and murder. Fail to charge the Jury on a motion not withstanding the verdict to find the appellant not guilty of all charges - but guilty of Accessory.

The accessory after the fact:

Is the product of the motive in which the appellant was held to be in fear of her life and cooperated with the co-defendants.

For A Fourth Defense:

Trial Counsel concealed the Discovery evidence of the (State's witness) Confession that the appellant did not participate in the murder, robbery, and kidnapping freely or voluntarily. It was out of fear that she assisted.

x Kyndra Howell
x H. J. Howell

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x Keige O Clark

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[C]

Exhibit C

Kyndra Howell
(Appellant)

v.

The State of
South Carolina
(Respondent)

Case No: 2022-001229

The Appellant files this motion to modify the Judgement Pursuant to S.C.A.C.R. Rule 59(e)

The Appellant moves upon the above court, on said motion to modify the Judgement, Pursuant to S.C.A.C.R. Rule 59(e).

The Appellant petitions the court to vacate all charges made against her and grant her time serve as all Accessary after the fact of murder, Robbery, and kidnapping, based on the fact that, on motion for reconsideration. Trial Judge ran the gun charge concurrent in conjunction with the murder charge was lifted.

x H. J. Howell

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on 12th day of June 2023

Notary Public for The State of
South Carolina

x Keiri O Clark

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Questions Presented

#1. Did the Law Enforcement Investigator (Mr. D. Barton) violate the Appellant's Constitutional rights, against unreasonable "Search and Seizure" after the co-defendant Coerced Confession who told the Investigator that the Appellant did not shoot the Deceased, and the Appellant did not rob the deceased, and the Appellant did not Beat the Deceased, and also the Appellant was not present - in the direct area - of the bedroom where the deceased was beaten and murdered.

#2. Did the Law Enforcement Investigator (Mr. D. Barton) hold the Appellant illegally and as a hostage against her will and falsely charge the Appellant with four crimes out of this incident in which she was arrested for?

Investigator (Mr. Danny Barton) obtained information to arrest the Appellant on false information and claims that she, the Appellant, murdered the deceased.

#3. Did the Chief Solicitor Indict the Appellant for the charge of murder, Armed Robbery, kidnapping, and carrying a weapon, (Gun), during the commission of a violent crime, in violation of the 5th Amendment? without a preliminary hearing, in lieu of failing to have a (Denovo hearing) based on the multiple codefendants.

The eye witnesses (the state witness), Confession exempts the Appellant from these crimes.

The Appellant should have been charged as an accessory after the fact. She should not be charged as principle to the crime, under the "hand of one" statute.

Closing

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The prosecutor obtained testimony from codefendant without signing the guilty plea contract agreement. As well as failed to grant transitionally immunity from prosecution being that he was an eye witness and was forced to participate in the kidnapping of the deceased and to testify against the Appellant.

The witness was not tried until he testified against the Appellant to secure her conviction.

x Kyndra Howell
x K.D. Howell

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on this 12th Day of June 2023
Notary Public For the State of South Carolina

x Kevin Clark

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Case No: 2022-001229

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Kyndra Howell
V.
The State of
South Carolina

The Appellant's Brief on
the Merits

OF Granting A New Trial

The Appellant petitions the court to conduct a De-novo Review Pursuant to: 1937 Rule 15© To Re-examine the brief and transcripts listed in Volume 1 on the Appellants

She (Appellant) states that A Denovo review is needed in this case at bar, to show how the prosecution attorney and police officers entrapped the Appellant for this crime.

She (Appellant) states that pursuant to S.C.A.C.R. Rule 15© Appellant review is not a matter of right, but is of the Court full panel.

The Issue Raise For Denovo Review are the following:

- Prosecution: Indicted the Appellant for murder, Armed Robbery, kidnapping, and use of a weapon in violation of the 5th Amendment U.S.C.A.

Prosecution concealed codefendants statement that the Appellant did not participate in the murder, Robbery, Beating of the deceased, But was a force participant into the kidnapping of the deceased.

Beating - shooting - Robbery - She was a forced participant into the kidnapping of the deceased. quoting → Brody V. Maryland 373. U.S. 83. (1963) → citing → Gibson V. State, 334. S.C. 515, 514. S.E. 2d. 320 (1999).

Appellant's Brief Continue Page 2 |

The Supreme Court ruled that one example of after-discovered evidence is a (discovery) violation by the prosecution. In Gibson v. State, 334 S.C. at 523, 514 S.E. 2d. at 324

The Government's obligation to make such disclosures of (Brady material) is pertinent not only to an accused's preparation for trial, but also to his determination of whether or not to (plead guilty). She (defendant) is entitled to make that decision with full awareness of favorable material evidence known to the Government. Id, 334 S.C. at 523-24, 514 S.E. 2d at 324

Quoting United States v. Avellino, 136 F.3d 249, 255 (2d Cir 1998).

As in context of a trial A materialistic requirement exists, A Brady violation is material, when there is a reasonable probability that, but for the government failure to disclose Brady evidence, the defendant would have refused to (plead guilty) and gone to trial. Id. in Gibson v. - The State, "Gibson held that" [when a defendant lacks knowledge of material evidence, in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary. In Gibson v. - State, the eye witness changed her mind, she could not remember whether the defendant was there. (She recanted her story).

The Supreme Court over turned Gibson's conviction based on Prosecution Concealment of the "eye witness" had changed her mind about what she had seen.

x Kyndra Howell
x K.D. Howell

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x Keyi Clark
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