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AUG 31 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Colleton County

Honorable Eugene C. Griffith, Circuit Court Judge

Tequan L. Brown,

PETITIONER

Vs.

State of South Carolina,

RESPONDENT

APPELLATE CASE NO.2022-001337

Motion for leave, and to hold Appeal in Abeyance

WILL YOU PLEASE TAKE NOTICE, that the above named petitioner will move this court to hold his appeal in abeyance, and for this court to grant him leave to make a motion in the court of General Sessions for a new trial based on after discovered evidence pursuant to rule 29(b) SCRPC. Petitioner makes this request on the following grounds:

- 1.) After the trial of this case new evidence of material facts, not previously presented and heard, that in the interest of justice requires vacation of the conviction, and sentence.
- 2.) This new evidence would probably change the result if a new trial was had.
- 3.) This evidence could not by the exercise of due diligence have been discovered before the trial.
- 4.) The evidence is material to the issue of guilt or innocence, and
- 5.) Is not merely cumulative or impeaching.

IN SUPPORT OF THIS MOTION PETITIONER ASSERT AS FOLLOWS:

- 6.) On or about November 20th, 2013, at approximately 4:48 a.m. the victim ("Kemp") came to the petitioner's house, highly intoxicated by a combination of cocaine, alcohol, and marijuana (see autopsy report) demanding entry.
- 7.) Kemp upon seeing Petitioner started making threats towards Petitioner's life and forced entry into Petitioner's home. Kemp then proceeded to exit Petitioner's residence via back door, and then circle the apartment banging on the windows, demanding to be let back in so he could access his car by passing through Petitioner's apartment again.
- 8.) When the Petitioner refused, Kemp again began threatening Petitioner, Kemp then walked around the apartment to return to his car. The next-door neighbor (Holmes) came over upon hearing the disturbance with his pistol, which Petitioner took away from Holmes to avoid antagonizing Kemp, given his hatred for Holmes.
- 9.) Petitioner, Walker, Holmes, and others were already in the Petitioner's front yard when Kemp finished rounding the building when Ms. Barbara came over, Kemp exited his car, "talking stuff" to Petitioner, and others. Petitioner told Kemp to leave. Kemp responded by running towards Petitioner while reaching. Kemp crossed from the parking lot which was separated from the apartment building's front yard by a side-walk into Petitioner's yard at which time Petitioner shot him.

II. NEW DISCOVERED EVIDENCE

- 10.) Wiley D. James, a witness who at Petitioner's residence the night of the shooting, and who also gave testimony at the pre-trial immunity hearing pursuant to the protection of persons and property act.
- 11.) James after the trial of this case admitted that after the shooting he was walking back towards his car (see. James aff. para. 22) he saw a black gun in (Kemp) hand and he picked it up from under Kemp, and ran to his car and took it to Jacksonboro.
- 12.) James admitted that while in Jacksonboro later on in the day of November 20th, 2013, that he was able to identify the gun he removed. Which was a black 357 caliber snub-nose revolver. In which James later sold.

In addition to James admission to the removal of Kemp's gun. In support of this motion, the Petitioner specifically craves reference to the witness testimony of Dr. Erin Presnell, the forensic pathologist of MUSC.

- 13.) Dr. Presnell report, and testimony in this matter are, and will be that Kemp's wound was not a contact wound. i.e. meaning the gunshot wound being a more distance range as opposed to being a contact or very close range, and not as the solicitor claimed.
- 14.) Dr. Presnell testimony will be that, if Kemp was shot as close as SLED trace evidence "Whitney Berry". Dr. Presnell would have seen stippling, or soot.
- 15.) Dr. Presnell testimony also will be that in general with handguns you can see stippling up to approximately 3 and a half feet between the barrel of the gun, and the skin.
- 16.) The next thing Dr.Presnell would have seen is, unburned gun powder(soot) which only travel a very short distance. Dr. Presnell testimony will be that, if this was a close range shooting as claimed by Whitney Berry, (i.e. contact, or close range) unburned gun powder would have been propelled into the skin and possibly through the wound itself, and she would have seen a black or gray discoloration actually in the skin, or beneath the wound itself, and searing which is a burning of the skin at the site of the gun shot wound if it was as close as the state claimed.

III. IN ADDRESSING THE SUFFICIENCY OF THE EVIDENCE

The testimony of Whitney Berry at the hearing, and trial of Petitioner went beyond Berry's educational background and training.

Berry's training only allows her to detect the presence of gun shot residue, and anything further then that is for the forensic pathologist "Dr. Susan Erin Presnell" who performed the autopsy.

In addition to the forensic testimony of Dr.Presnell, and the actual evidence at the scene do not support the state's theory of Kemp being shot within 3 feet from the muzzle of the gun. Based upon Dr.Presnell review, and information, and Wiley James admission. The GSR on Kemp's hand came from the snub-nose 357 caliber revolver that Kemp had on his persons. While running towards Petitioner while reaching in his waistband.

Given the new evidence obtain after the trial of Petitioner, and the fact that there is no TESTIMONY from any of the eye-witnesses, that Petitioner threatened,

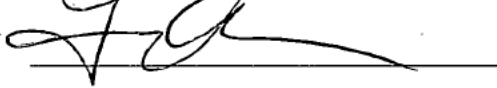
provoked, or caused any sort of disturbance towards Mr. Kemp. Rather, the testimony of Jermaine Brown, Wiley James, Lawrenzer Walker, Barbara Mays, Nayronne Holmes, and Petitioner himself. All the results are uncontroverted that Kemp was at his car then advanced on petitioner in a threatening manner.

Petitioner was without fault in bringing on the difficulty and the state failed to prove that Petitioner was with fault, or was at least the aggressor.

“Where there is no evidence to support a conviction an order granting a new trial should be up held.” State v. Smith, 316 S.C. 447 S.E. 2d 175

THEREFORE, based on all the foregoing reasons, Petitioner respectfully request to hold his appeal in abeyance.

RESPECTFULLY SUBMITTED,



Tequan L. Brown

Ridgeland Corr. Inst.

P.O. Box 2039

Ridgeland, S.C. 29936

Date: 4/24/23
8/21/23

■ COURT REPORTS

Man gets 10 years after pleading guilty to heroin charge

A Connecticut man arrested on a drug charge during a traffic stop on I-95 was ordered to spend four years behind bars when he plead guilty during last week's Colleton County General Sessions Court proceedings. Jose R. Diaz, 47, of Hartford, Conn. pled guilty to a charge of possession of heroin with intent to distribute. He was ordered to serve four years of a 10-year prison sentence and then

spend three years on probation. ■ Walter R. Sutter, 43, of Wal-terboro, was sentenced to spend 18 months in prison after he pled guilty to a charge of shoplifting with enhancements. The sentencing enhancement came into play because Sutter had at least two previous shoplifting convictions. ■ Timothy Wayne Thornton Jr., 18, of Wal-terboro, pled guilty to a

charge of second-degree assault and battery, was ordered to spend up to three years in custody under the state's Youthful Offender Act and was placed on probation for three years. ■ Brenda Wingate, 46, of Hartsville, S.C. pled guilty to a charge of criminal domestic violence and was ordered to serve 30 days of a 60-day jail term. ■ Shelley N. Pafford, 27, of

Cottageville, pled guilty to a charge of manufacturing/distribution of methamphetamine, was given a suspended eight-year prison term with credit for time served and was placed on probation for two years. ■ Hallie Thomas Blocker, 20, of Islandton, pled guilty to a charge of illegal possession of prescription drugs and was sentenced to time served.

SHOOTING

Continued from 1A

After being quickly treated at the scene, paramedics moved the gunshot victims to the Emergency Department of Colleton Medical Center. Young was immediately placed on a medical emergency helicopter and flown to the Trauma Center of the Medical University of South Carolina. Hampton's treatment continued at the Colleton Medical Center and then she too was placed on a helicopter for a flight to the Trauma Center.

According to city police both victims sustained multiple, life-threatening gunshot wounds in the attack.

Walterboro Police Department's Public Information Officer, Amye Stivender, said that Hampton described her attacker as a tall black male with shoulder-length dreadlocks.

She was able to tell investigators that she awoke when she heard the bedroom door opening and believed it was her son coming in the bedroom.

The gunman had apparently entered the home through an unlocked door.

The incident reports lists four witnesses. Stivender said investigators were still determining if anyone other than the gunman and the victims were in the home at the time of the shooting.

Stivender said the investigators are still attempting to determine a motive behind the shootings.

City police are asking that anyone who has information on the incident to contact the Walterboro Police Department at 843-549-1811.

Trial for fatal shooting included dead witnesses, changing testimonies

By GEORGE SALSBERY
gsalsberry@courier.com

The jurors in the trial of a Walterboro man charged with killing of another man needed approximately three hours to find the suspect guilty of three charges last week.

After the jury returned with a guilty verdict Thursday afternoon after nearly three hours of deliberation, 14th Circuit Court Judge Perry Buckner sentenced Tequan L. Brown, 27,

of Walterboro to 25 years in prison on a charge of voluntary manslaughter, a consecutive five years in prison on a charge of possession of a weapon during the commission of a violent crime and a concurrent 10-year prison term on an obstruction of justice charge.

Brown initially faced a murder charge. When Buckner gave the case to the jury, he told them they had the option of finding the defendant guilty of murder, voluntary manslaughter or self-defense.

Assistant Solicitor Tameaka Legette, a member of the Fourteenth Circuit Solicitor's Office Career Criminal Prosecution Team, said she was satisfied with the voluntary manslaughter conviction.

During the trial, Legette said, "There was evidence of illegal provocation" — testimony that suggested

the fatal shots had been fired "in the heat of passion."

Brown was initially charged with murder based on the evidence the investigation amassed in the days following the Nov. 20, 2013 shooting death of Maurice Kemp.

But between the initial arrest and the start of the trial, a number of things occurred that resulted in some evidence not being presented to the jury.

One of the main hurdles the prosecution had to overcome was the death of its principal witness, Kemp's girlfriend Coco Boulwares. She died in a car crash in April of this year.

The prosecution also expected to call Brown's accomplice, Lawrence Walker, 30, of Walterboro. Walker had been arrested on an obstruction of justice charge.

Walker, with Brown at the time of the shooting, had taken the handgun from the shooter and dumped it along Poor Farm Road. Deputies recovered the .32 caliber weapon used in the shooting.

Walker had already entered a guilty plea to the charge and, as part of the proposed sentencing agreement, was supposed to testify at Brown's trial. His sentencing was delayed until he appeared in court to testify against



TEQUAN BROWN

Brown. But Walker did not make it to the witness stand either — he is in prison in Maryland.

Failure to have Walker testify did not present as big a problem to the prosecution as the loss of Boulwares' testimony, Legette said. "His testimony had changed, he changed his story over and over again," Legette explained.

"There were a lot of changes in statements," Legette said. Witnesses "changed testimony over and over again."

She pointed out that Brown changed his story to investigators several times. At one time, he tried to blame the shooting on another man, then he said the shooting was self-defense.

It was all those varying stories that led to the filing of the obstruction of justice charge against Brown. "His attorney conceded that point," Legette said.

"I told the jury from the beginning that everyone involved had changed their story over and over again, that the only evidence they could really

trust was the science," Legette said.

One critical piece of scientific evidence was the gunshot residue found on the hands of both Brown and Kemp, according to Legette.

"You expect to find gun shot residue on the hands of the suspect," she pointed out. "When you find it on the hands of the gunshot victim," she added, "it shows that the victim was in close proximity to the fired weapon."

A SLED expert was able to tell the jury that the shooter was within two and a-half to three feet of the victim.

That meant that Brown had to leave his apartment, walk down the sidewalk and shoot Kemp as he was entering his car to leave the apartment complex.

In the 2013 incident, Boulwares went to the residence on Brights Court following an argument with Kemp. Distraught, Kemp went to Brights Court in search of Boulwares. Kemp went to Brown's home first but soon discovered that Boulwares was next door. But as Kemp and Boulwares were leaving, Brown came out of his home armed with a gun.

"To God be all the Glory," Legette exclaimed. "None of this could have been possible without Him, because we had some hiccups in this case."

■ CITY FINANCE DIRECTOR LEAVING

Floyd will miss the destination



ROBBERIES

Continued from 1A

County Detention Center on two counts of strong-armed robbery filed by the city and a



Department of Pathology and Lab Medicine

MSC 908

Req: xAutopsy, For Coroner
Add: xAutopsy, For Coroner
Loc: ACOL
Client: ACOL-Colleton County Coroner

Patient: KEMP, MOURICE
Med Rec: KEMMOU112113
DOB: 11/23/83 (Age: 30)
Sex: M Race: Black

Autopsy Final Report

Date and Time of Autopsy: 11/21/2013 09:00

Accession Number: FA13-613

Hospital/County: ACOL-Colleton County Coroner
Service: Laboratory
Submitting Physician: xAutopsy, For Coroner
Attending Pathologist: S. Erin Presnell, M.D. (1-4391)
Prosecutor(s): Monroe, Darren
Date/Time of Death: 11/20/2013 0538
Autopsy Reason: Requested by Coroner
Authorized By: Richard Carter, Deputy Coroner
Autopsy Restrictions: None

Pathologist Assistant: Eowyn Corcraln

Diagnosis

- Penetrating gunshot wound to forehead with cerebral disruption, subarachnoid and intraventricular hemorrhage
- Penetrating gunshot wound to right flank with soft tissue disruption
- ~~No soot or stippling on skin~~
- Cardiomegaly (550 grams)
- Edematous, heavy lungs (combined weight - 2280 grams)
- Calcified subcapsular hepatic nodule
- Renal capsular petechiae
- Gallbladder cholesterol polyps
- Peripheral blood toxicology: delta-9 THC 2.9 ng/mL, delta-9-carboxy THC 7.5 ng/mL, cocaine 170 ng/mL, cocaethylene 140 ng/mL, benzoylcegonine 1000 ng/mL, levamisole
- Blood ethanol 137 mg/dL (0.137%)

Cause of Death

Cerebral disruption
due to
Gunshot wound to the head

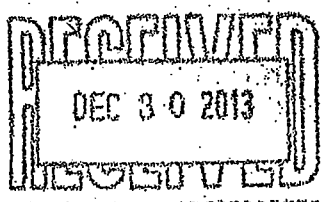
Contributory: Gunshot wound to right flank

Manner of Death

Homicide

Case History

Shot by someone



Department of Pathology and Laboratory Medicine
Interim Chair: Mary Richardson, M.D. Interim Director: Mary Richardson, M.D.

Anatomic Pathology	Autopsy Pathology	Client Services	Clinical Pathology
Phone: 803-792-3144	Phone: 803-792-3144	Phone: 803-792-3144	Phone: 803-792-3144
Fax: 803-792-3144	Fax: 803-792-3144	Fax: 803-792-3144	Fax: 803-792-3144

Patient: KEMP, MOURICE Med Rec: KEMMOU112113 Location: ACOL

Clinical Summary

According to the coroner, the decedent was a 30-year-old man who was shot on November 20, 2013. EMS responded and transported him to the hospital where he was pronounced dead at 5:38 a.m. on that same morning.

Gross Description**EXTERNAL EXAMINATION**

The body is that of a well-developed, obese (calculated body mass index BMI = 48.4) adult black male who weighs approximately 367 pounds, is 72 inches in length, and appears compatible with the stated age of 30 years. The body is identified by the coroner. A hospital band with the decedent's name and CM00093172 is around the right wrist. The body is clad in blue jean shorts (previously cut) with a black belt, gray boxer brief underwear, and two white socks. The following items accompany the decedent: two peach colored towels/washcloths, one quarter, and one dime. The body is cold to the touch. Rigor is partially fixed (2-3/4) in all extremities and jaw. Livor is indiscernible. The scalp hair is black, curly, fashioned in braids up to 3 inches in length. The irides are brown. The pupils are equal. The corneas are slightly clouded. The sclerae and conjunctivae are unremarkable. The nose and ears are not unusual. The lips and gums are intact. The teeth are in good condition. The deceased has a beard. The neck is without masses, and the larynx is in the midline. The thorax appears symmetric. The abdomen is obese. Striae are on the shoulders and abdomen. The penis is unremarkable. The testes are descended within the scrotum. The anus and back are unremarkable. The upper and lower extremities are well-developed and symmetric without absence of digits.

Identifying marks and scars consist of a lion tattoo on the left upper chest; tattoo of the Holy Bible and "Matthew 6" on the left upper arm; tattoo of a crown on the dorsal right hand; 2.5 inch scar on the left cheek; 1 inch scar on the posterior neck in the midline; 0.8 inch scar on the left anterolateral chest; 1 inch scar on the right abdomen; 0.8 inch scar on the left upper arm; 0.7 inch scar on the anterior left forearm; two scars up to 3.2 inch each on the dorsal left forearm; three scars up to 2 inch are on the dorsal right forearm; and a 0.9 inch scar on the right knee. Multiple nonspecific scars up to 0.5 inch each are on the dorsal left hand. Evidence of emergency resuscitation and / or medical therapy includes an intraosseous line in the left tibia.

EVIDENCE OF INJURY

GUNSHOT WOUND TO FOREHEAD: A 0.25 x 0.25 inch round entrance gunshot wound is to the forehead in the midline between the eyebrows, 2.1 inches below the top of the head. A circumferential abrasion border measures 0.1 inch. No soot or stippling is present. The bullet pathway is through skin and subcutaneous tissue of the forehead, right frontal bone and cribriform plate, inferior right and left frontal cerebrum at the midline, right parietal cerebrum, and into the right occipital lobe where the bullet is recovered within the posterior right occipital lobe near the midline. Associated injuries include bilateral basilar subarachnoid hemorrhage and intraventricular hemorrhage. The trajectory of the bullet pathway through the body is front to back and slightly to the right. The bullet, designated #2, is a partially deformed, gray metal projectile, which measures 0.5 inch in length and 0.3 inch in diameter at the base. A 0.3 x 0.1 inch gray metal is recovered from the entrance wound at the skin, and a 0.85 x 0.15 inch gray metal fragment is recovered along the bullet pathway in the right frontal cerebrum.

GUNSHOT WOUND TO THE RIGHT ABDOMEN: A 0.3 x 0.2 inch ovoid entrance gunshot wound is to the anterolateral right abdomen ~ 24.75 inches below the top of the head and 5.8 inches to the right of midline. An eccentric abrasion border from 9 - 7 o'clock measures up to 0.45 inch at 2 o'clock. Skin tags are along the 7 - 9 o'clock position. No soot or stippling is present. The bullet pathway is through skin and subcutaneous tissue of the right flank, and into the underlying adipose tissue where the bullet is recovered. The bullet, designated #1, is an intact gray metal projectile, measures 0.55 inch in length and 0.3 inch in diameter at the base. Associated injuries include soft tissue hemorrhage along the tract of the bullet path. The trajectory of the bullet pathway through the body is front to back and slightly lateral.

RADIOGRAPHS: Anterior/posterior and lateral x-rays of the head, chest, and abdomen reveal two radiopaque projectiles and associated fragments, recovered at autopsy.

EVIDENCE TRANSFER: The following items are transferred on November 21, 2013 at 1:50 p.m. to Sgt. James R. Davis, #539, of the Colleton County Sheriff's Office: jean shorts, black belt, gray boxer brief underwear, two white socks, two peach colored towel/wash cloths, one quarter, one dime, right fingernail clippings, left fingernail clippings, pulled scalp hair, bullet 1, bullet 2 (flank), bullet fragment (forehead), bullet fragment (frontal brain), blood spot on filter paper, and a CD with digital images from the autopsy.

INTERNAL EXAMINATION

BODY CAVITIES: No adhesions or abnormal collections of fluid are in any of the body cavities. All body organs are present in

Department of Pathology and Laboratory Medicine

Interim Chair: Mary Richardson, M.D. Interim Director: Mary Richardson, M.D.

Anatomic Pathology

Phone: 803-732-3621

Fax: 803-732-3621

Patient: KEMP, MOURICE

Autopsy Pathology

Phone: 803-732-3621

Fax: 803-732-3621

Client Services

Phone: 803-732-3621

Fax: 803-732-3621

Clinical Pathology

Phone: 803-732-3621

Fax: 803-732-3621

Med Rec: KEMMOU112113

Location: ACO

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SC Court of Appeals

Tequan L. Brown#341915
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936

8/21/23

Office of the clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

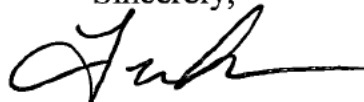
RE: Tequan L. Brown, v. State. Appellate Case No:2022-001337

Dear Clerk of Court:

Please find enclosed a motion for leave, and to hold the appeal in abeyance.
I've already file a motion to hold the case in abeyance back in April of this year.
Please if you are so minded forward me a clock stamp copy of this motion.
Thank you for your time.

With kind regards, I am

Sincerely,



Tequan L. Brown

Tequan Brown #341915
Ridgeland Correctional Institution
Post office Box 2039
Ridgeland, S.C. 29936

CHARLESTON SC 294

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**RIDGELAND CORRECTIONAL
INSTITUTION**

AUG 28 2023

Mailroom

SCDC
SEP 18 '23
MAIL ROOM

Legal mail

29211-162929

Office of the Clerk
South Carolina Court of Appeals
Post office Box 11629
Columbia, S.C. 29211

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Court of Appeals

