In The Supreme Court Of South Carolina

In The Eleventh Judicial Circuit

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S.C. SUPREME COURT

Ronald D. Michaux, Jr.,	)	Appellate Case No. 2024-000960
Petitioner,	)	
v.	)	Appellate's Johnson
State of South Carolina,	)	Petition
Respondent	)	

NOW COMES THE Appellate, Ronald D. Michaux, Jr., proceeding pro se, who moves this Honorable Court, pursuant to Rule 243(a), South Carolina Appellate Court Rules, for an Order granting me a new trial based on the following grounds.

Law/Analysis

Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure,

Summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party has "'the initial burden of showing the absence of a genuine issue of material fact' as to an essential element of the non-movant's case." Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989) (quoting Celotex v. Catrett, 477 U.S. 242, 248 (1986). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In ruling on a motion for summary judgment, "the nonmoving party's evidence is to be believed, and all justifiable inferences are to be [redacted] drawn in that party's favor." The News & Observer Publ'g Co., 597 F.3d 570, 576 (quoting Hunt v. Cromartie, 526 U.S. 541, 552 (1999)). Testimony is "material"

when it could "in any reasonable likelihood have affected the judgment of the jury.'" State v. Brown, 441 S.C. 464, 894 S.E.2d 525 (S.C. 2023) (quoting Napue v. Illinois, 360 U.S. 264, 271.

The Uniform Post-Conviction Procedure Act (the Act) contemplates the applicability of the South Carolina Rules of Civil Procedure in PCR actions. Section 17-27-80 of the South Carolina Code (Supp. 2006) states, "All rules and statutes applicable in civil proceedings are available to the parties." (emphasis added). Hiott v. State, 375 S.C. 354, 652 S.E.2d 436, 437 (Ct. App. Oct. 11, 2007). The plain language of §17-27-10 requires all rules that apply in a civil case apply to PCR actions. A PCR action is a civil action. Council v. Catoe, 359 S.C. 120, 125, 597 S.E.2d 782, 784 (2004). Rule 71.1(e) would apply to PCR proceedings because PCR actions are civil. Rule 71.1(e), SCRCP. The South Carolina Rules of Civil Procedure "govern the procedure in all South Carolina courts in all suits of a civil nature...." Rule 1, SCRCP. (emphasis added). Furthermore, the South Carolina Rules of Civil Procedure apply to PCR actions "to the extent that they are not inconsistent with the Act." Rule 71.1(a), SCRCP. See Gamble v. State, 298 S.C. 176, 177, 379 S.E.2d 118 (1989) (holding the South Carolina Rules of Civil Procedure apply to all civil actions, a petition for PCR is a civil action, the Act specifically incorporates the applicable rules of civil practice....).

Issue I - Whether the PCR Court erred in finding trial counsel provided effective representation where counsel failed to raise a Batson motion.

"In criminal cases, the appellate courts sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). A court is "bound by the trial court's factual findings unless they are clearly erroneous." Id. at 6, 545 S.E.2d at 829; see also State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999) ("The trial court's findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous.").

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a [juror] on the basis of race or gender." U.S. Const. amend. 14 § 1; McCrea v. Gheraibeh, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008); see also Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712. The United States Supreme has set forth a 3-step inquiry for evaluating whether a party executed a preemptory challenge in a manner which violated the Equal Protection Clause. See Purkett v. Elem, 514 U.S. 765, 767-68, 115 S.Ct. 1769, 131 L.Ed.2d 834

(1995). First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. State v. Giles, [redacted] 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted) (quoting Miller-El v. Dretke, 545 U.S. 231, 277, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005)). Step 2 of the analysis [redacted] does not require that the race-neutral explanation be persuasive, or even plausible. Purkett v. Elem, 514 U.S. 765, 768, 115 S.Ct. 1769. The explanation must only be "clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step 3] to assess the plausibility of the reason in light of all the evidence with a bearing on it." [redacted] State v. Giles, 407 S.C. [redacted] 14, 21-22, 754 S.E.2d 261, 265. Step 3 of the above analysis requires the court to carefully evaluate whether the party asserting the Batson challenge has proven racial discrimination by demonstrating that the proffered [redacted] race-neutral reasons are mere pretext for a discriminatory intent. Batson v. Kentucky, 476 U.S. 79, 93-94, 106 S.Ct. 1712 (stating that the court must consider "the totality of the relevant facts," including both direct and circumstantial evidence). During Step 3, the party asserting the Batson challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. State v. Edwards, 384 S.C. 504, 508-09, 682 S.E.2d 820, 822. In doing

so, the party proves that the "originally neutral reason was .... a pretext because it was not applied in a neutral manner." State v. Oglesby, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989).

I first submit that trial counsel was ineffective pursuant to Rule 1.1, of the South Carolina Rules of Professional Conduct for failing to object that the solicitor struck Kimberly Dunlap (black female juror) from the jury pool without giving the trial court a race-neutral reason for do so. See Exhibit A (Tr.p. 70 lines 8-10); See Declaration (page 3). The solicitor testified at the hearing that, "the State struck just one, and it was because she had a criminal charge on her record." Exhibit A (Tr.p. 384-389). However, the record also reflects that this same black female juror who was struck also had this alleged charge nolle prossed/dismissed in 2008. See Exhibit A (Tr.p. 385-386). So, this means that Kimberly Dunlap (black female juror) - who was struck by the State - did not have a charge on her record to disqualify her to be a juror. Furthermore, there was NO facts, testimony, or any other evidence presented to the PCR court substantiating that Kimber Dunlap (black female juror) had a criminal charge on her record.

Next, I assert that trial counsel was ineffective pursuant to Rule 1.7 (comment 6), of the South Carolina Rules of Professional Conduct by striking Linda Green (black female juror) based on her race. See Exhibit A (Tr.p. 72 lines 5-10).

When trial counsel struck the second black female juror from the jury pool, he acted as the solicitor's advocate because he testified at the evidentiary hearing that, "in Lexington our jury pool is super minority black" .... "and you'd be lucky to get 3 on a whole pool." See Exhibit A (Tr. p. 350 lines 10-13). It wouldn't make no sense for trial counsel to strike the second black female from the juror when he already has knowledge that Lexington discriminates on having black people seated on the jury. Trial counsel deprived me of the opportunity to have a jury of my peers to be seated on the jury. There was only 2 black people in the entire courtroom during my trial. And, that was me and the only black female juror. Everybody else in the courtroom was white. There were NO black male jurors seated on the jury pool, nor was there any black males selected to be placed on the jury. Right after the solicitor struck one black female juror and trial counsel struck another black female juror, the State AND my attorney seated 5 WHITE female jurors to be seated on the jury pool. See Exhibit A (Tr. p. 72 line 24 - p. 75 line 2).

In conclusion, I was denied the opportunity to raise a Batson claim to the trial court, the trial court was denied the opportunity to carefully evaluate whether I have proven racial discrimination in the selection of the jury, and I was denied the opportunity to point to direct evidence of

racial discrimination, such as showing that the Solicitor struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race.

Issue 2 - Whether the PCR Court erred in finding trial Counsel provided effective representation where Counsel failed to argue the affidavit supporting the arrest warrant lacked probable cause.

The Fourth Amendment warrant clause reads that "no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing .... the persons .... to be seized. S.C. Const. Art. I § 10 states: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable ... seizures ... and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

S.C. Code Ann. §17-13-140 states: "A Warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate .... establishing the grounds for the warrant.

Although arrest warrants and search warrants issue upon a judicial determination of probable cause, each protect a different Fourth Amendment interest and thus requires a different factual showing. An arrest warrant protects an individual from an unreasonable seizure and issues upon a showing of ~~probable cause~~ probable cause to believe a suspect is committing or has committed an offense. The Fourth Amendment Warrant clause imposes and establishes three requirements for the issuance of a constitutional arrest warrant: 1) a judicial officer, normally a magistrate, must determine that probable cause exists for the arrest; 2) this determination must be supported by oath or affirmation; and 3) the warrant must contain a particularized description of the person to be seized. A warrant that fails to satisfy these requirements is subject to challenge. Moreover, an arrest warrant insulates the fruits of an arrest

Under the Federal Rules of Criminal Procedure, a complaint requesting an arrest warrant must contain "essential facts constituting the offense charged and sworn affidavit must establish grounds for issuing a warrant. Fed. R. Crim. P. 3, 41(c). See also Illinois v. Gates, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 76 L.Ed. 2d 527 (1983).

First, I submit that the affidavit in support of the arrest warrant is constitutionally deficient because it sets forth Trooper Harrison's conclusions that I trafficked 100g to 200g of cocaine. Also, trial counsel was ineffective pursuant to Rule 1.1, & 1.3 for failing to argue this issue because the Fourth Amendment warrant clause, state constitution, and state statute requires that, "no warrants shall issue but upon probable cause...." U.S. Const. amend. IV; S.C. Const. art. 1§10; S.C. Code Ann. §17-13-140. An affidavit must contain sufficient underlying facts and ~~circumstances~~ information upon which a magistrate may make a determination of probable cause. State v. Smith, 301 S.C. 371, 373, 392 S.E. 2d 182, 183. Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. Id. "[H]is action cannot be a mere ratification of the bare conclusions of others." Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed. 2d 527, 549 (1983). Because the warrant was obtained after I was in jail, and after having been arrested on the side of the road, the officer allegedly smelling marijuana in the car, determined that I was driving without a valid license, and the officer finding a small black bag that field tested for cocaine is meritless.

I assert that Trooper Harrison never initially had probable cause to arrest me. I never committed a traffic violation to warrant a traffic stop. Trooper Harrison alleged that he pulled me over because, "he noticed that my vehicle was not maintaining its lane of travel, meaning that I was not driving in the center of the highway lanes." Tr.p. 8 lines 6-12. And, that was the reason for the traffic stop. Tr.p. 8 lines 18-21. However, this is not a criminal act nor is it unlawful in any manner. Furthermore, Trooper Harrison testified that he issued me a warning traffic citation. See Exhibit A (Tr.p. 16 lines 8-12; Tr.p. 17 lines 5-7; Tr.p. 25 line 23 - p. 26 line 7). Moreover, Trooper Harrison never produced the traffic citation to the trial court. See Exhibit A (Tr.p. 26 lines 8-10). The fact that I committed NO traffic violations for Trooper Harrison to pull me over and combined with the fact that he never produced the traffic ticket as an evidentiary fact, I submit that Trooper Harrison did NOT have probable cause to stop and search the vehicle I was driving. Trial Counsel had this exact requisite knowledge at the time of my trial, yet he failed to argue this issue to the judge. I was prejudiced by this omission because had he argued this issue, he could have requested that the trial court suppress the drugs found after the search of the vehicle.

Finally, the affidavit in Exhibit C is sufficient to enable a magistrate to make an independent determination of whether reasonable cause exists for an arrest. Also, this is an example of how Trooper Harrison should have wrote or filed his affidavit to support the arrest warrant in my case. See Exhibit C (Sample Affidavit). I further add this this affidavit circumvents the warrant requirements in §17-13-140 of the South Carolina Code and if this Court exclude the conclusory statements contained within the affidavit, it makes it impossible for a magistrate to make an independent determination of probable cause and all the magistrate did was act as a rubber stamp for Trooper Harrison. Issuance of a warrant on an affidavit that is devoid of facts violates the Fourth Amendment. A competent magistrate will not issue a warrant such as the one issued to me and, since a magistrate issue one, it does not insulate evidence from suppressions. See United States v. Leon, 468 U.S. 897, 914, 104 S.Ct. 3405, 3416, 82 L.Ed. 2d 677 (1984).

Issue 3 - Whether the PCR Court erred in finding trial counsel provided effective representation for not arguing that the grand jury was impaneled outside of a General Sessions term.

First, I assert that trial Counsel was ineffective pursuant to Rule 1.1, 1.3, of the South Carolina Rules of Professional Conduct for not thoroughly investigating the allegation of this claim and not conducting discovery to determine whether the grand jury convened or NOT to bring forth a true-billed indictment. PCR Counsel was also ineffective for NOT conducting discovery, pursuant to Rule 1.1, 1.3, SCRPC, to determine whether the grand jury convened or NOT to bring forth a true-billed indictment. My bill of indictment prints that it was returned, "At a Court of General Sessions, convened on August 2014, the Grand Jurors of Lexington County present upon their oath:..." See Exhibit D (Indictment). This indictment is signed by the Assistant Solicitor, and sealed with a True-Billed stamp. See Exhibit D (Indictment). Furthermore, the title page of State's indictment prints that it was True-Billed stamp with the Grand Jury ~~foreperson~~ foreperson's signature dated on July 13, 2014, a month before the grand jury convened. See Exhibit D (Indictment). However, the terms of the Court of General Sessions for Lexington County are fixed by S.C. Code Ann. §14-5-760, which DOES NOT offer provisions for a Court to be open on July 13, 2014 or August 2014. The terms of Lexington County

General Sessions Court shall be held at Lexington on: 1) the 3rd Monday in January for 2 weeks, 2) 4th Monday in May for 2 weeks, and 3) the Tuesday following the first Monday in September for 2 weeks.

The matter presented for review is NOT a challenge to the Court's general grant of authority to hear and determine cases. That authority is rightfully granted by ~~the~~ the State and federal constitution. U.S. Const. amend. V & IV, S. ~~Co~~Const. art. I § 11. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The Court of General Sessions failed to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of true-billed indictments. "The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental." State v. Heyward, 564 S.E.2d 379 (Ct.App. 2002). "And, "no indictment may be true-billed by grand jury when Circuit Court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the Court in which it is impaneled and for which it is to make inquiry...." State v. McClure, 274 S.C. 432, 289 S.E.2d 158 (1982); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972).

The statutory provision at issue is contained in S.C. Code Ann. §14-9-210, and provide in pertinent part that: "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, bills of indictment in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for 30 days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the Court of General Sessions and said judge shall direct the Clerk of the Court of General Sessions to report the same to the presiding judge of the county at it's next ensuing term...." S.C. Code Ann. §14-9-210 is jurisdictional in nature and requires that ALL criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions. I submit that a grand jury was NOT impaneled before the Court of General Sessions in this case.

The statutory terms above are clear, unambiguous, and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 179, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statutes operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1998). Moreover, penal statutes must be construed strictly against the State and in favor of defendant. 304 S.C. 270, 403 S.E.2d 660 (1991) (emphasis added).

It should be noted that S.C. Code Ann. §14-9-210 is not a local rule or statute but a general provision applicable to the Courts in every County. No local rule of Court, administrative order, policy, or other procedure can take precedent over statutory law, which

is always controlling. See S.C. Const. art. 1 § 4, State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953) (Statutes override rules of court if in conflict) S.C. Const. art. V § 4 provides in pertinent part: "The Supreme Court shall make rules governing the administration of all courts of this state, subject to the statutory law the Supreme Court shall make rules governing the practice and procedures in all such courts." (emphasis added). Thus, under those requirements, NO rules can be made or established for process and return of indictments, unless it comports with Section 14-9-210. Additionally, it should be noted that the Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of true-billed criminal indictments. "The Court is made up of the Court of Common Pleas which hear [redacted] civil actions and the Court of General Sessions which hears criminal cases...." S.C. Const. art. V § 1, see also Dove v. Gold Kist Inc., 314 S.C. 235, 442 S.E. 2d 598, 600 (1994). Thus, there is no grant of concurrent jurisdiction, and therefore, NO true-bill criminal indictments can be lawfully issued through grand jury proceedings held before a Court of Common Pleas.

Finally, I assert that the grand jury NEVER convened to bring forth a true-billed indictment. Trial Counsel nor PCR Counsel conducted discovery or petitioned the Solicitor's office for the grand jury transcripts involving my indictment. Trial Counsel nor PCR Counsel presented the grand jury transcripts, ~~State~~'s petition, supporting materials, or documentary proof that the grand jury was qualified by circuit judge in open court to the trial court or PCR Court substantiating that the grand jury convened to bring forth a true-billed indictment. Since, grand jury never convened to bring forth a true-billed indictment, the trial court was not vested with subject matter jurisdiction. I did not effectively litigate this issue at the evidentiary hearing because I am not familiar with the law and I only have an eighth grade education. I am - and have always been - prevented from learning and researching the law because I am - and have always been - confined behind a locked cell door 24/7. Lee C.I. prison guards and staff members DO NOT allow me or other prisoners within the F-5 Unit to attend the law library or allow the law clerk to come to the F-5 Unit.

It must be remembered that I am proceeding pro se without an attorney, and that a pro se litigant untrained in the law is not to be held to the same standards as a member of the bar. Haynes v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972) "[T]he court has previously stressed that, when dealing with a pro se litigant, "we must yield consideration to the fact that [I] am a pro se litigant untrained in the law." Whitehead v. Paramount Picture Corp., 2000 WL 33363291 (D.D.C. April 19, 2000). Moreover, in situations where a plaintiff is proceeding pro se, is incarcerated, [redacted] the ... court should take great steps to ensure that the plaintiff is given no less procedure than if he were proceeding with counsel. I also apologize to this Court if I have failed to apply the correct legal standards and citations pertaining to this Johnson petition. "[T]he submission of a pro se litigant must be construed liberally and interpreted 'to raise the strongest arguments that they suggest.'" Triestman v. Fed. Bureau of Prisoners,

Conclusion

Wherefore, I respectfully request for this Honorable Court to deny the PCR Court's Order and grant me a new trial.

Bishopville, South Carolina

Dated: February 14, 2025

Respectfully,

s/ Ronald D. Michaud