

October 16th 2013

State of South Carolina
In the Court of Appeals

The State

Respondent

Scott T. Lee

v.

Appellant

Appellate Case no. # 2012-210830

Anders Brief Amendment of
Appellant (Pro-se Motion)

To: Your Honors At the
Court of Appeals:

: Kathrine Hudgins
Appellant Defender

P.O. Box 11589
Columbia, SC 29211-1589

: Scott T. Lee

P.O. Box 205
Ridgeville, SC 29472

RECEIVED

NOV 01 2013

SC Court of Appeals

TO THE COURT OF Appeals Justice's: October 26th, 2013

Your Honor I do not know of any other way to address the Miranda issues in my case except be very specific and be straight to the point with it all. Please forgive my lack of knowledge in preparing this Anders Brief Amendment because we have been locked down for over 6 months now Your Honor and I simply have not been able to go to the law library to properly prepare this statement.

(Miranda violation) Miranda vs. Arizona
384 U.S. 436, 86 S.Ct. 1602 (1966)

Your Honor on 2-9-11 Investigator's Chad Collins and Thomas McFadden came to our home and told me that I had to come with them for questioning. I told them both that I had already told them everything I could tell them about Mikey and this case that could help them. It had been two solid months after Mikey's death and these detectives (mainly Inv. Thomas McFadden) had come to my home with over "16 different suspects" in that two month period of time. I was scared to say anything else because they had already had so many suspects that I felt that if I told them anything else I would incriminate myself because I would have had to put myself at the scene of the crime. I simply did not know how to handle the situation that I was involved in Your Honor and I simply wanted to speak with a attorney first before I had any further discussions with Investigator Thomas McFadden. See *BRAM vs. United States* 168 U.S. 532, 542, 18 S.Ct. 183, 187, 42 L.Ed. 568; *Boyd vs. United States* 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 and also *Counselman vs. Hitchcock* 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110. The Fifth Amendment commands that no persons be compelled to be

A witness against himself (Self incrimination). When Investigators Chad Collins and Thomas McFadden walked up in my yard they were both pointing their cell phones at me "recording" the whole conversation or arrest as it took place. Inv. Thomas McFadden told me I had to go with them to talk and I said I'd like to talk to a lawyer named Patric McGlarkin before I spoke with them any more and Inv. McFadden said I was then under arrest for murder. I told him again "I want a lawyer" and Inv. McFadden says "NO" because the attorney would only tell me not to talk with him and that would not be helping anyone specially me at this point. As soon as I ask for a lawyer the "second-time" this Inv. McFadden started pushing buttons on his cell phone and he was telling me that his phone chip was burning up in his cell phone. Inv. Chad Collins of the Florence County Sherriff Department recorded and witnessed everything and there is proof in the investigator's typed reports that is in my Discovery Motion where he clearly states that I ask for a lawyer standing in my frontyard and Inv. Thomas McFadden was still going to question me! Investigator Chad Collins wrote this report Your Honor and Inv. Chad Collins never attempted to speak to me again after I ask for the attorney but Inv. Thomas McFadden put me straight in his front seat and started his interrogation in my frontyard. This Inv. Thomas McFadden repeatedly questioned me and threatened to arrest my mother and my brother if I didn't tell him what he wanted to know. Inv. McFadden repeatedly threatened to take my son from me and have him put in a foster home on our way to his office at the Florence County Detention Center in Florence South Carolina. Inv. Chad Collins stayed at my home because we gave him permission to search our home. In State vs. Simmons 682 S.E. 2d 19 it says: A statement may not be extracted by

Any Sort of threats or violence, obtained by any direct or implied promises, however slight, or obtained by any sort of exertion of improper influences, In State vs. Sattz 551 S.E. 2d 240 it states: "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting statement offends Due Process of Law 5th and 14th Amend to Constitution. See also Hopt vs. People of Territory of Utah 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262; Pierce vs. United States 160 U.S. 355, 16 S.Ct. 321, 40 L.Ed. 454; In Malloy vs. Hogan 378 U.S. 1, 8, 84 S.Ct. 1489, 1493, 12 L.Ed. 2d 653 it states: "It has been said that admissible statements must be made by suspects in the unfettered exercise of his own will" and also that "a prisoner is not to be made the deluded instrument of his own conviction." - see Culombe vs. Connecticut 367 U.S. 568, 581, 81 S.Ct. 1860, 1867, 6 L.Ed. 2d 1037. The more important premise is that pressure on the suspect must be eliminated though it be only subtle influence of the atmosphere and surroundings. Once we got to Tom Thomas McFadden's office at 11:15 AM on 2-9-11 he took me into a room that had three other investigators already sitting in it and they all started asking questions to me. I told the investigators that I did not want to hurt or hinder their case because Mikey was my friend but I did not want my words twisted nor did I want other words or statements put in my mouth so I wanted to speak to a lawyer and my mother first for 20 or 30 minutes and then we would come back into the investigators office and tell them everything I knew about Mikey's death, but they kept ignoring my request for the lawyer and they refused to call my mother or allow me to call her, they simply kept implying that I killed Mikey and then asking me why I did it. This

Falls under Haynes vs. State of Washington 373 U.S.

503: Violation is Found because detectives refused to allow arrested person call Attorney or wife. RCWA 9.33-020 14th Amendment. Statement was involuntary and inadmissible in prosecution, where defendant, who was held incommunicado was told that he could telephone his wife only after he had written out a confession, (14th Amendment.) Courts held that the admission of involuntary statement/confession in robbery case in state courts was reversible error, though other evidence was sufficient to sustain conviction. Your Honor this is exactly what Inv. Thomas McFadden reportedly told me. He would say, "You don't need a Attorney, just confess, and then tell us why you did it" or "you can call your momma and she'll get you a Attorney after you confess" or "A Attorney can not do anything for you until you tell us what happened Scott".

All of these and more was said to me over and over and over your Honor. I could not think clearly at all. In fact all I could think to say was "I did not kill anybody" and "I need to see a lawyer and my mother for 30 minutes and then we will come back in here and tell you everything I know about Mikee's death," but they all totally ignored any and all request for the Attorney or my mother your Honor. Compelled statements are banned: see Lanza vs.

State of New Jersey 306 U.S. 451, 455, 59 S.Ct. 618,

619, 83 L.Ed. 888. The interrogation did not stop until 4:30 pm (over 5 hours later after I requested a Attorney in my yard), when I stood up and threatened to walk out of the office with handcuffs on. This is when Inv. Thomas McFadden took me over to the "Booking department" where I was "Booked" into the Jail (while he waited) then Inv. McFadden took me back to the interrogation room and had me sign something that stated I understood my rights and then about 30 or 45 minutes later he took me to lock-up (the max). I did not understand that I had a right by law to have a Attorney present

because All they said to me was you have the right to remain silent And they told me AFTER I Confessed that I could call my lawyer And if I did not have a lawyer then somebody Somewhere would appoint me one, but they kept telling me I had to Confess to my Friends death Your Honor And I did not kill him so I kept refusing to Confess And demanding a lawyer come speak to me, but as I said they simply ignored all request for the Attorney, AT trial when they produced the first days interrogation with only 20 minutes recorded (the last 20 minutes of the interrogation), I then knew why they kept ignoring all my request for the Attorney Your Honor. My Mother Shirley S. Lee was standing with us And she also heard me ask the Investigators for a lawyer twice Your Honor. My mothers statement and Inv. Chad Collins typed Police report of my Arrest will be presented to Your Honor if Your Honor request it, I don't hesitate to say I Ask for a Attorney over 10 times the first day of interrogation Your Honor and it very clearly states in ~~Arizona v. Goyette~~ Miranda v. Arizona 384 U.S. 436, 86 S.Ct. 1602 (1966): There can be no Questioning if Accused indicates in Any Manner And At Any Stage of Interrogation process that he wishes to Consult with a Attorney. U.S.C.A. 6th Amendment (Key no. 412.2(1): Police may not question individual if he is Alone And indicates in Any Manner that he does not wish to be interrogated (Key no. 412.1(4): Mere Fact that Accused may have Answered Some Questions or volunteered Some Statement on his own does not deprive him of the right to refrain from Answering Any Further inquiries until he has consulted with Attorney And

Hereafter Consent to be Questioned, U.S.C.A. 5th & 6th Amendment (Key no. 412.2 (1))! Also - Constitutional Foundation underlying privilege against self incrimination is the respect a government, state or Federal, must accord to dignity and integrity of its citizens; Also Government seeking to punish individual must produce evidence against accused by its own independent labors, rather than by cruel simple expedient of "Compelling" it from accused's own mouth. U.S.C.A. 5th Amend. Key no. 393 (1)! Individuals swept from familiar surroundings into police custody, surrounded by antagonistic forces and subjected to techniques of persuasion employed by police, cannot be otherwise than under "Compulsion to speak" U.S.C.A. 5th (Key no. 393 (1))! Voluntariness doctrine in state cases compasses all interrogation practices which are likely to exert such pressure upon the individual as to disable him from making a free and rational choice, U.S.C.A. 5th Amendment 412.1 (4)! Independent of any other constitutional prescription, preventing attorney from consulting with client is a violation of the sixth Amendment Constitutional Right to Assistance of Counsel and excludes any statement obtained in its wake U.S.C.A. 6th (Key no. 412.2 (4))! To combat pressures in in-custody interrogation and to permit full opportunity to exercise privilege against self-incrimination, accused must be adequately apprised of his rights and exercise of these rights must be fully honored by police U.S.C.A. 5th Amend. (Key no. 393 (1)) 412.2 (3)! The right to have counsel present at interrogation is indispensable to protection of the 5th Amendment (Key no. 412.2 (1))! Pre-interrogation request for a attorney affirmatively secures accused right to have attorney!

The fact that interrogation is lengthy or incommunicado incarceration before statement is made is strong evidence that accused did not validly waive his rights U.S.C.A. 5th Amend. (Key no. 412.1 (3), 412.1 (4): Any evidence that accused was threatened, tricked, or cajoled into waiver will show that he did not voluntarily waive his privilege to remain silent U.S.C.A. 5th 393 (1): Privilege against self-incrimination protects individual from being "compelled" to incriminate himself in any manner, it does not distinguish degrees of incrimination 393 (1): With respect to affording assistance of counsel - while authorities are not required to release accused of his poverty - they have a obligation not to take advantage of indigence in administration of justice 6th Amend. (Key no 641.6 (3): IF individual indicates that he wishes assistance of counsel before interrogation occurs, authorities cannot rationally ignore or deny request on basis that individual does not have or cannot afford retained attorney 412.2 (1). Your Honor all of these apply to my case I believe. The detectives that interrogated me intentionally violated my right to counsel in order to attempt to secure a confession of some sort Your Honor, on 2-10-11 Inv. McFadden came and got me from "lock-up" and told me that I had to go with him to be questioned. I told him "NO" I don't want to go anywhere, but it was a bond hearing so I went. At my bond hearing I was on video camera by the "news people" and I ask Judge Belinda Timmons (Magistrate Justice) for a appointed public defender and she granted my request for one. I was immediately taken to a holding cell after the judge denied bond. Within ten minutes of being in that holding cell Investigator Thomas McFadden came and got me and he took me right back to his interrogation room and he and Inv. Kathleen Street

Further Questioned me another two hours and this was after I just ask for a lawyer on camera Your Honor. At this interrogation I repeatedly told them I needed to see a lawyer before I spoke with them any further because anything and everything I was going to say would definitely have incriminated me Your Honor because I had to put myself at the crime scene in order to tell them what I knew about this case and Mikey's death. There was simply no other way to say the things I needed to say Your Honor except for me to be very blunt about everything that happened the night Mikey got shot and I was scared to do that or to have that type of conversation with that detective without speaking to a attorney first to make sure I was doing the right thing and secondly to make sure my words and my statements did not get twisted or misconstrued in any way and I felt like in the worst case scenario the attorney could at least testify in your court as to what I said and how I said it if it every came to that, but every time I ask them to speak to a lawyer I was simply ignored and ask more questions. This had to violate my Miranda Right and it also had to violate your Honors Due Process laws in our Constitution. The third day 2-11-11 Inv. Thomas McFadden came to my cell again and made me go with him again to his interrogation office where he interrogated me further but to be honest I'm not sure how long that third days interrogation lasted because my mind was exhausted and I simply could not think about anything anymore. I remember telling them I did not kill Mikey and that I needed to speak with a attorney before I could talk

to the Investigators Any Further. AT this point I had to have ASK to SPEAK with a lawyer over twenty different times in a three day time span Your Honor And every single request was ignored totally or denied with A explanation From Inv. Thomas McFadden. Right AFTER my case this Inv. Thomas McFadden was ~~demoted~~ demoted to "Burglary" From his Homicide Detective position. Finally AFTER 5 days I WAS Allowed to speak to my mother on visit. IT WAS over Four solid months before I got to see my Public Defender Your Honor 4 Solid months AFTER my Arrest For A Murder Charge. The Head Solicitor Edgar Clements III Immediately jumped off my case At my Arraignment Hearing And he gave my case to his newest rookie Assistant Solicitor MATT Ormets. I WAS denied All hearings that I requested except my Arraignment Hearing And I WASN'T given or Allowed to have my Arraignment Hearing For over 8 Solid months AFTER my Arrest Your Honor. I WAS denied A Speedy trial And I requested it the same month of my Arrest And I have proof by Copy's I made of All request forwarded to Solicitor Edgar Clements III. I WAS denied A Circuit Court Bond Hearing, I WAS denied my Brady Motion For over 7 months And when I got it- it WAS still largely incomplete Your Honor. I have proof of me Asking For A Lawyer by eye-witnesses (including A Investigator) And his reports And his cell phone recording of my Arrest plus I can get the News Camera's video tape plus I can use The Compact Disc (CD's) (what the investigators didn't erase) For Further proof Your Honor. All of This WAS hidden From my trial Judges Attention during my trial.

To address Mr. Zelenka Brief or response: Your Honor Mr. Zelenka does not know a thing about my case except he read some of the parts of my transcripts because if he was bright enough to know or to research my case or discovery motion he would clearly be able to see that he (Mr. Zelenka) just quoted (or requested) lies told by Shannon Bailey and John then Lee. He would also know that Assistant Solicitor MATT Oments intentionally lied to my Judge and Jury repeatedly during trial as well as misleading my Jury by twisting the facts of my case. That Assistant Solicitor intentionally misconstrued the facts and evidence in my case by hiding the eye-witnesses, coroners, experts, and other very relevant direct evidence Your Honor, in fact this is the only way I got convicted at trial, but you better believe it will not happen like that again because I will personally make sure all of Ass. Sol. MATT Oments and John then Lee and Inv. Thomas McFaddens lies are exposed from this point forward if my charges are not corrected. Your Honor I greatly thank you for your time, effort, and wisdom in reviewing my poor excuse for a Anders's Brief Amendment. Thank you again Your Honors.

Respectfully Submitted
to you

Scott T. Lee

October 22nd, 2013

Scott T. Lee

NOTARY PUBLIC

THIS 28th DAY OF October

2013

Lucyann Bryant

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 26, 2020

RECEIVED

NOV 01 2013

SC Court of Appeals