Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

September 25, 2012

Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re.: Petition for Writ of Certiorari
Cornell Tyler v. The State (2008-089629)

Dear Sir or Madame:

Please find enclosed my petition for writ of certiorari and certificate of service in the above matter. Please file these originals with your office.

As an indigent, pro se petitioner who is currently incarcerated, I am forced to beg the Court's indulgence on a couple of matters. First, as you will note from the date on the certificate of service, these pleadings have been delivered to the institutional mailroom with sufficient time to arrive at your office. Unfortunately, the prison system is less than reliable with the punctual delivery of mail. In the event that they do not arrive on time, please note that a prison riot occurring here at Lee on September 13 triggered a statewide prison lockdown; the lockdown was extended here at Lee, and most normal functions (such as mail room, law library, copies, etc.) were cancelled. Three other, smaller lockdowns have had similar effects, with the ultimate result that, despite my very best efforts, these pleadings have been mailed later than I would have preferred, so I may be forced to beg the court's indulgence.

Secondly, I am aware that Rule 226(c), SCACR, requires me to submit an original and six copies of my petition to your office for filing. Because of indigency, the aforementioned lockdowns, and prison restrictions on the copying of documents, that is simply not possible in the time allowed. Again, I beg the Court's mercy and indulgence in this matter. If necessary, I would be more than happy to reimburse the Court for the production of copies.

Finally, I have included all of the materials in my possession and control that are required as an appendix pursuant to rule 226(e). Anything not included has not been provided to me, and again, I beg the court's indulgence.

I am most appreciative for your time and your understanding in this matter.

Sincerely,

Cornell D Tyler 326023

cc: South Carolina Court of Appeals
File

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable Clifton Newman, Circuit Court Judge

2008-089629

Cornell D. Tyler,

Petitioner,

v.

The State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI
AND CERTIFICATION OF COUNSEL

Pursuant to Rule 226, SCACR, Petitioner Cornell D. Tyler would hereby move this Honorable Court to issue a writ of certiorari to review the decision of the Court of Appeals in the above-captioned matter, as there are substantial constitutional issues directly involved. Furthermore, in accordance with Rule 226(d)(1), Petitioner hereby declares under penalty of perjury that a pro se petition for rehearing was made to the Court of Appeals in this case, and that said petition was denied on August 27, 2012.

September 25, 2012
Bishopville, South Carolina

Cornell D. Tyler 326023

Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Petitioner, pro se

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES

1. Did the trial court lack jurisdiction over the cause as there is no indictment from the grand jury?

2. Did the trial court err in failing to properly voir dire the jury?

3. Did the trial court err in failing to grant Petitioner's motion for a change of venue?

4. Did the trial court err in denying Petitioner's motion for a directed verdict?

5. Did the trial court err in allowing the State to present to the jury a gun as demonstrative evidence when it had no relevance to the case at hand?

6. Was Petitioner prejudiced by the State's misconduct in vouching for the credibility of its witnesses and its prejudicial remarks in its opening and closing statements?

7. Is there sufficient evidence to uphold the guilty verdict when there was no evidence - only statements of a co-defendant - placing Petitioner at the scene of the crime?

8. Did the trial court err in charging jury with the "hand of one, hand of all" as an accessory aider and abetter pursuant to S.C. 16-21-140 for offense of murder and ABWIK?

STATEMENT OF FACTS

On January 7 - 10, 2008, Petitioner Cornell Tyler stood trial in Aiken county before Judge Clifton Newman and a jury, on indictments charging him with murder, assault and battery with intent to kill, and possession of a firearm during the commission of a violent crime. The State alleged that Tyler fired on a newspaper delivery truck, wounding the passenger and killing the driver. The State's key witness was Edward Walker, who claimed that he was "laying on top of the car, on the sunroof," during the high-speed chase and saw Tyler firing from the back passenger window. ROA, page 201, line 3 though page 202, line 13. The defense contended that Walker himself was the perpetrator. ROA page 662, line 22 through page 663, line 1. When the shooting occurred, Tyler testified, "I was in my house." ROA page 566, lines 22-24. He accused the State's witness of lying "so they won't go to jail for the rest of their life like they're trying to make me." ROA page 577, lines 7-10.

ARGUMENT

The Petitioner, Cornell D. Tyler, petitions this Court for a writ of certiorari to challenge his convictions for murder, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. The Petitioner's appellate lawyer filed an Anders brief arguing the trial court erred in neglecting to instruct the jury on the defense of alibi, which is a PCR issue and is not, at any rate, preserved for appellate review. Petitioner also filed a pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967). After a thorough review of the record and of all briefs pursuant to Anders v. California and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), the appellate court dismissed the appeal and granted counsel's motion to be relieved.

The Petitioner respectfully submits that the panel's decision overlooked and misapprehended certain facts and some of the issues that were preserved for the record and presented to the courts in Petitioner's pro se Anders brief. The Petitioner prays that this Court will grant certiorari and review these issues that were preserved.

1. DID THE TRIAL COURT LACK JURISDICTION OVER THE CAUSE AS THERE IS NO INDICTMENT FROM THE GRAND JURY?

Petitioner contends he was denied his 6th amendment right to a fair trial and his 14th amendment right to due process, as well as S.C. Const. Article I § II when he was tried on indictments that did not come from the grand jury, thus depriving the Court of its jurisdiction over the cause.

FACTS

The State lost the original indictment from the first trial and wanted to use a copy of the first indictment to proceed to a second trial. (See page 35, line 13 through page 36, line 8). The State asked the defendant to stipulate that the grand jury had convened on April 17, 2006, as well as to the grand jury's findings on the back of the indictment sufficiently alleged the facts of the charge. However, the back of the indictment as to the "action of the grand jury" is blank.

2. DID TRIAL COURT ERR IN FAILING TO PROPERLY VOIR DIRE THE JURY?

Petitioner contends that the trial court erred in failing to properly voir dire the jury as to pretrial publicity that rendered Petitioner's trial unfair and denied Petitioner his 6th amendment right to a fair trial and his 14th amendment right to due process of law.

FACTS

The trial judge admitted that he was unaware of any jurors in this case having stated at any time during these proceedings during the week of trial that they were aware of a prior trial in this case. (Transcript, page 123, lines 8-11); he further admitted that he (the judge) didn't ask any jurors whether they were aware of a prior trial (Transcript page 123, lines 22-24). Trial counsel also presented affidavits from the jury that was present during the first trial that clearly indicated that petitioner would not receive a fair trial due to publicity. Trial counsel presented to the court numerous newspaper articles that made an issue on how petitioner's first trial "did not render

justice," and how the people and the Aiken Standard "have full conviction that justice will be served." Because the victim was an employee of the Standard, numerous articles were run regarding this case.

3. DID TRIAL COURT ERR IN FAILING TO GRANT PETITIONER'S MOTION FOR A CHANGE OF VENUE?

Petitioner contends that the trial court erred in failing to grant Petitioner's motion for a change of venue, where there existed a strong possibility that Petitioner would not get a fair trial after the first trial was a mistrial.

FACTS

Trial counsel also presented an affidavit of the jury that was present during the first trial that clearly indicated that the petitioner wouldn't receive a fair trial due to publicity. Petitioner already had a trial that ended in a mistrial.

The town's only newspaper ran numerous amounts of prejudicial articles condemning the murder and calling for justice to be served. See Transcript pages 22-31. Since the victim was an employee of the newspaper, a large number of inflammatory articles ran in the paper.

4. DID THE TRIAL COURT ERR IN DENYING PETITIONER'S MOTION FOR A DIRECTED VERDICT?

Petitioner contends that the trial court erred in denying petitioner's motion for a directed verdict, especially when the State presented no evidence

placing Petitioner at the scene of the crime.

FACTS

A motion for a directed verdict should be granted by the trial judge when the evidence merely raises a suspicion that the accused is guilty. See State v. Buckman, 555 S.C.2d 402. Likewise, when the evidence simply allows the jury to engage in speculation regarding the guilt of the accused, the trial court judge is required to grant the motion for a directed verdict. See State v. Walker 562 S.E.2d 313 (2002); State v. Mitchell, 535 S.E.2d 126 (2000); also see State v. Sharck 322 S.E.2d 450. Evidence was insufficient to convict when the only evidence placing the defendant at the scene of the crime was a statement by his co-defendant. The State clearly has no evidence putting petitioner in the car or at the crime scene. See Transcript, page 336 line 21 through page 337 line 6.

5. DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO PRESENT TO THE JURY A GUN AS DEMONSTRATIVE EVIDENCE WHEN IT HAD NO RELEVANCE TO THE CASE AT HAND?

There was no evidence showing the petitioner owned a 7.62 caliber weapon and no 7.62 weapon was found. Cumulative prejudicial effect of a 7.62 caliber weapon being shown to the jury outweighed the probative value of evidence in prosecution for murder committed by a weapon that fires a 7.62 round. Petitioner was not in possession of any weapon that fires a 7.62 round. No evidence was introduced showing the Petitioner ever owned or used a 7.62m weapon and no such weapon was found. Petitioner contends based on the record, page 353, in this case the gun should not have been presented to the jury

because the cumulative prejudicial effect of the enumerated evidence outweighed its probative value.

FACTS

During Petitioner's trial, the State called agent Ira Parnell to testify as a firearm identification expert. The State acknowledged that the weapon was not the weapon used. The SLED report stated that, based on the general rifle firing characteristic sizes 11, 12, and 14, a list of firearms and/or origens of firearms that might have fired these items includes but "is not limited to the following[.]" (Transcript, page 343 lines 16-25; page 345 lines 6-13.) See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); see also State v. McConnell, 350 S.E.2d 179 (1986).

6. WAS PETITIONER PREJUDICED BY THE STATE'S MISCONDUCT IN VOUCHING FOR THE CREDIBILITY OF ITS WITNESSES AND ITS PREJUDICIAL REMARKS IN ITS OPENING AND CLOSING STATEMENTS?

Petitioner contends that he was prejudiced by the State's misconduct in vouching for its witness and labeling the Petitioner's story as "unbelievable" and stating that Petitioner was guilty.

FACTS

In its closing statment, the State declared that, "well, he just needs to sit down, because the State has shown us beyond a reasonable doubt that this man is guilty." Transcript page 667, lines 12-16. Further, the State vouched for its witness when it declared that, "Joe Brower has told the truth from day

one... because you know he is not a liar." (See Transcript, page 670, line 5 and page 671, lines 5-7.) This after Joe Brower had already testified to two different statements at trial. Then, the State said, "Cornell Tyler has an unbelievable testimony," (page 673, lines 9-10). It was also improper for the State to say that defense witnesses were liars or were not telling the truth (page 701, lines 22-25; 702, lines 23-25). See U.S. v. Smith, 982 F.2d 681-684 (1st Cir. 1993); U.S. v. Thomas, 246 F.3d 438, 439 (5th Cir. 2001).

7. IS THERE SUFFICIENT EVIDENCE TO UPHOLD THE GUILTY VERDICT WHEN THERE WAS NO EVIDENCE - ONLY STATEMENTS OF A CO-DEFENDANT - PLACING PETITIONER AT THE SCENE OF THE CRIME?

At the close of the State's case, trial counsel moved for a directed verdict. Transcript page 475 lines 16-17. The motion was denied. At the end of the defense's case, trial counsel again moved for a directed verdict based on the sufficiency of evidence. The motion was denied. Petitioner contends that this was error.

FACTS

It has been held that the declarations of a co-conspirator or co-defendant can have no greater force than the testimony of an accomplice or co-defendant, and hence evidence of statement of a co-conspirator or co-defendant tending to inculpate the accused is not, in the absence of corroborative evidence, sufficient for a conviction. Unless corroborated, statements of a co-conspirator or co-defendant tending to inculpate the accused are insufficient to justify a conviction. See State v. Buckman, 555 S.E.2d 402; C.J.S. page 998.

The State presented no evidence that Petitioner was in the car or even at the scene of the crime, and used only the statement of a co-defendant to convict Petitioner with no corroborating evidence.

8. DID THE TRIAL COURT ERR IN CHARGING JURY WITH THE "HAND OF ONE, HAND OF ALL" AS AN ACCESSORY AIDER AND ABETTER PURSUANT TO S.C. 16-21-140 FOR OFFENSE OF MURDER AND ABWIK?

Petitioner contends that the "Hand of one, hand of all" theory was an erroneous and ambiguous jury instruction.

FACTS

The prosecution failed to properly allege or prove a conspiracy of accessory theory under which all defendants could be found guilty or not guilty. Had the State charged defendants with conspiracy, it could then have pursued a conviction against both defendants under the "hand of one, hand of all" theory. Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate that is incidental to the execution of the common design and purpose. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981). To admit evidence under the theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. However, the State didn't charge the defendants with conspiracy, so this approach was unavailable at trial. However, the State never presented any evidence that the Petitioner and co-defendant had joined with each other or with others to accomplish an illegal act. The State didn't even demonstrate prior knowledge

that a crime was going to be committed. However, the State must prove beyond a reasonable doubt by competent evidence of that theory that the hand of one is indeed the hand of all. See State v. Langley, 515 S.E.2d 98, State v. Woomer, 277 S.E.2d 696, State v. Austin, 385 S.E.2d 832, State v. Leonard, 355 S.E.2d 270.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable Clifton Newman, Circuit Court Judge

2008-089629

Cornell D. Tyler,

Petitioner,

v.

The State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Cornell D. Tyler, hereby certify under penalty of perjury that I have served a copy of the Petition for Writ of Certiorari on Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka at Post Office Box 11549, Columbia, South Carolina, 29211, by hand-delivering a copy of same to Lee Correctional mail room staff with first class postage paid.

September 25, 2012
Bishopville, South Carolina

Cornell D Tyler 326023

Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Petitioner, pro se

To The Supreme Court of South Carolina

Dear Sir or Madame:

Pursuant to Rule 226(e), SCACR, you are required to include a copy of the record on appeal and brief, the decision of the Court of Appeals in the case; and A Copy of petition for rehearing and the Court's ruling on that petition. Enclosed is the decision of the Court on my Appeal and petition for rehearing as required. The Clerk of Court and the Court of Appeals never sent my Copies of the record on appeal and my brief nor Copies of my petition for rehearing. As an indigent, pro se petitioner who is Currently incarcerated im asking this Court to please contact the Clerk of Court for the Court of Appeals and have the to forward all that is required Pursuant to Rule 226(e), SCACR. To this Court. I am most appreciative for your time and understanding in this matter.

Sincerely,

Cornell D Tyler 326023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Cornell D. Tyler, Appellant.

Appeal From Aiken County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2012-UP-448
Submitted May 1, 2012 – Filed July 18, 2012

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz III, of Columbia, and Cornell D. Tyler, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka, all of

Columbia; and Solicitor J. Strom Thurmond Jr., of Aiken, for Respondent.

PER CURIAM: Cornell D. Tyler appeals his convictions for murder, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime, arguing the trial court erred in neglecting to instruct the jury on the defense of alibi. Additionally, Tyler filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

The State, Respondent,

v.

Cornell Tyler, Jr., Appellant.

Appellate Case No. 2008-089629

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon Few C.J.

Thomas E. Huff J.

Paul E. Short, Jr. J.

Columbia, South Carolina

cc:
Alan McCrory Wilson
John W. McIntosh
Joseph L. Savitz, III
Donald J. Zelenka
Barbara R. Morgan

FILED
August 27, 2012

Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Supreme Court of South Carolina
Clerk of Court's Office
Post Office Box 11330
Columbia, SC 29211