

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JERMAINE T. FULLER,

APPELLANT:

PETITION FOR REHEARING

JERMAINE T. FULLER, #338130
B.R.C.I. Mt. 2035
4460 Broad River Rd.
Columbia, S.C. 29210

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FEB 21 2014

SC Court of Appeals

MEMORANDUM

Cases:

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 U.S. (Cal. 1967)....2

Appel v. Horn, 250 F.2d 203 (2001).....2

Benitez v. U.S., 521 F.3d 625, 630, 636 (6th Cir. 2008).....2

Ex Parte Jackson, 381 S.C. 253, 672 S.E. 2d 585.....2

Ex Parte Strom, 243 S.C. 257, 539 S.E. 2d 699 (S.C. 2000).....2

Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 2661 (Ky. 1987)....1.

Lowery v. Cardwell, 535 F.2d 546 (9th Cir. 1976).....2

Miller v. State of S.C., 309 F. Supp. 1287 (1970).....2

Patterson v. Leeke, 556 F.2d 1168 S.C. 417 (C.A. S.C. 1977).....1

Simmons v. State, 264 S.C. 417, 215 S.E. 2d 883 (S.C. 1975).....1

State v. Roberts, 364 S.C. 583, 614 S.E. 2d 626 (2005).....2

State v. Shuler, 344 S.C. 604, 545 S.E. 2d 805, 815 (2001).....1

State v. Williams, 210 S.E. 2d 298, 263 S.C. 290 (1974).....2

U.S. v. Collins, 430 F.3d 1260, 1268- (10th Cir. 2005).....2

Watts v. State, 556 S.E. 2d 368, 347 S.C. 399 (2001).....2

Rules:

Rule 264(b) SCACR.....1

Rule 11(b) SCRCrimP.....1

Supporting Documents:

Transcript: August 27, 2009.....1-2

Transcript: October 9, 2009.....2

Citation of Cases:

Anders v. California, Supra: " Counsel appointed for state appeal who finds his case to be wholly frivolous, after conscientious examination should so advise court and request permission to withdraw, supplying brief referring to anything in record that might arguably support appeal; copy of brief should be furnished defendant with time allowed to raise any points that he chooses, whereupon court should proceed, after full examination of all proceedings, to decide whether case is wholly frivolous, granting request to withdraw if it finds case to be frivolous, and affording assistance of counsel to argue appeal if it finds legal points arguable on merits.

Appel v. Horn, Supra: "Appel's competency hearing was a critical stage of his trial. The District Court noted that Kraft and Crowe 'had the obligation to act as counsel at Appel's competency hearing by subjecting the state's evidence of competency to 'meaningful adversarial testing.'"

Benitez v. U.S., Supra. ("court's failure to inquire into defendant's dissatisfaction with counsel constituted denial of counsel not subject to harmless error analysis"(42 Geo.L.J. Ann. Rev. Crim. Proc. (2013))).

Ex Parte Jackson, "When determining whether an accused knowingly and voluntarily waived his right to counsel, the ultimate test is not the trial judges advice but rather the defendant's understanding.

The following factors are to be considered in determining whether an accused had a sufficient background to understand the disadvantages of self representation in waiving the right to counsel:.....(10) whether the accused's waiver resulted from either coercion or mistreatment."

Ex Parte Strom, Supra. ("Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason, and equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding" (Rulle 11(b) SCRCrimP))

Kentucky v. Stincer, Supra: "The court has assumed that, even in situations where the defendant is not actually confronting witnesses or evidence against him, he has a due process right to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge."

id. at 2661: "Even in that context, however, the question is not simply whether, "but for" the outcome of the proceeding, the defendant would have avoided conviction, but whether the defendant's presence at the proceeding would have contributed to the defendant's opportunity to defend himself against the charges."

Lowery v. Cardwell, Supra at 550: "What was said in the conference might have had nothing whatsoever to do with appellant's case and might not have constituted a "stage" of the proceeding where fundamental fairness required the appellant's presence. If her fundamental rights were

involved in the proceeding occurring in the chambers, she might well be entitled to appropriate relief."

Miller v. State, Supra: "Test of 'critical stage' of criminal proceeding as it relates to right to counsel is whether proceeding either requires or offers opportunity to take procedural step which will have prejudicial effects in later proceedings, or whether events transpire that are likely to prejudice ensuing trial."

Patterson v. Leeke; Supra, Simmons v. State, Supra, : "'Generally, post-conviction hearing statutes do not afford relief in the case of alleged errors for which remedies were available before and during the original trial, or by review on motion for a new trial or an appeal. These statutes were not intended to afford a procedure to operate as a substitute for a motion for a new trial, or for an appeal or writ of error; and ordinarily a judgement of conviction may not be challenged on grounds which could have been raised by a direct appeal." 24 CJS Criminal Law's/606 (a)b."

State v. Roberts, Supra: "appellate counsel has no duty to raise every non-frivolous issue presented by the record."

State v. Shuler, Supra: "A criminal defendant has the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure."

State v. Williams, Supra: "It is now settled however that an accused is entitled to the assistance of counsel at every critical stage of the proceedings and failure to have such assistance is reversible error even though no prejudice is shown."

U.S. v. Collins, Supra: ("constructive denial of right to counsel... at competency hearing not subject to harmless error analysis because counsel could have introduced evidence to alter outcome" (42 Geo. L.J. Ann. Rev. Crim. Proc. (2013)))

Watts v. State, Supra: "The judge did not ask petitioner a single question about why he relieved his counsel or if he wished to have counsel present. Furthermore, petitioner did not say anything about counsel during the plea proceeding. He never said he wished to waive his right to counsel, he did not want an attorney, or he wanted to represent himself."

Citation of Rules:

Rule 264(b) SCACR: " Withdrawal. An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party."

Rule 11(b) SCRCrimP, (See citation for Ex Parte Strom)

Appellant petitions for a rehearing on the Court of Appeals final decision #2014-UP-045, because Appellant was denied a full appellate review.

Pursuant to Rule 264(b) SCACR, on January 9, 2013, Appellant's counsel informed the Court that he did not want Appellant to be deprived of the opportunity to present relevant issues and explained his position on Appellant proceeding pro se to present them. (See record).

On December 27, 2012, along with a motion to proceed pro se, Appellant filed a 19 page brief on the following two issues: (See Record)

- 1 Did the trial court err in dismissing Appellant's attorney per ex parte conference?
- 2 Did the trial court err in ruling Appellant competent at competency hearing without counsel?

Appellant argues that these two issues are structural issues appropriate for review by the Court of Appeals, and he denies the Court's assertion made in its order that a PCR would be the appropriate remedy. (See Record) Simmons v. State, 264 S.C. 417, 215 S.E.2d 884 (S.C. 1975); Patterson v. Leeke, 556 F.2d 1168 (C.A. S.C. 1977).

As for issue one (1), an accused has the right to be present at every stage of the proceeding against him. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805, 815 (2001); Kentucky v. Stincer, 482 U.S. 730, 107, S.Ct. 2658, 2661 (Ky. 1987) Also, "a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party." Rule 11 (b) SCRCrimP. The trial judge's dismissal of Appellant's counsel per an ex parte conference with Appellant's counsel and the solicitor, excluding Appellant, and refusing to hear Appellant's reasons for dismissing counsel, was reversible error not subject to

harmless analysis. (See Tr. August 27, 2009). Benitez v. U.S., 521 F.3d 625, 630, 636 (6th Cir. 2008) Lowery v. Cardwell, 535 F.2d 546 (9th Cir. 1976); Ex Parte Strom, 243 S.C. 257, 539 S.E. 2d 699 (S.C. 2000).

As for issue two (2) , an accused has the right to be represented by counsel at every critical stage of the proceedings against him. State v. Williams, 210 S.E. 2d 298, 263 S.C. 290 (1974); Miller v. State of S.C., 309 F. Supp. 1287 (1970). Appellant's competency hearing was a critical stage of the proceedings. U.S. v. Collins, 430 F.3d 1260, 1266 (10th Cir. 2005); Apel v. Horn, 250 F.3d 203 (2001); Miller v. State of S.C., 309 F. Supp. 1287 (1970). Absent a valid waiver of counsel by Appellant, the trial court's denial of counsel for Appellant was reversible error not subject to harmless analysis. State v. Williams, supra; Watts v. State, 556 S.E. 2d 368, 347 S.C. 399 (2001); U.S. v. Collins, 430 F.3d 1260, 1266 (10th Cir. 2005); (See Tr. October 9, 2009) Trial court thereby violated Appellant's 5th amendment right to due process and 6th amendment right to counsel.

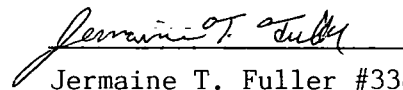
The Court of Appeals denied Appellant's motion to be heard on these issues quoting "appellate counsel has no duty to raise every non frivolous issue presented by the record. State v. Roberts, 363 S.C. 583, 614 S.E.2d 626, (2005). State v. Roberts, supra, did not apply here, since there were no non frivolous issues whatsoever being raised by Appellant's counsel as the court's final decision demonstrates. (See record)

Although no appropriate Anders brief was filed, the circumstances and positions of Appellant and his counsel in this case are identical to Anders and warranted the Court to proceed pursuant thereof. Anders v. California 386 U.S. 638, 87 S.Ct. 1396 U.S. (Cal. 1967) If the Court needed an Anders

to proceed accordingly, simple instructions to Appellant's counsel would have been most appropriate, or if a more affirmative request for withdrawal was needed from counsel in order to withdraw, simple instructions to counsel would have been appropriate to ensure that the Appellant was afforded a fair appeal. Failure to do so, violated Appellant's 5th Amendment right to due process and 6th amendment right to counsel.

For the foregoing reasons, Appellant request the court of Appeals for a rehearing on the said issues.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jermaine T. Fuller", is written over a horizontal line.

Jermaine T. Fuller #338130

February 18, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JERMAINE T. FULLER,

APPELLANT.

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FEB 21 2014

SC Court of Appeals

CERTIFICATE OF SERVICE

I, Jermaine T. Fuller, hereby certify that the foregoing motion, **Petition For Rehearing**, has been served on the following parties by depositing said motion in the Broad River Corr. Inst.'s mailroom, this 19th day of February 2014, addressed as follows:

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Mr. William M. Blich, Jr.
P.O. Box 11549
Columbia, S.C. 29211

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 19th day of February 2014

Susan H. Dye
Notary Public For South Carolina

Jermaine T. Fuller
Jermaine T. Fuller #338130
B.R.C.I. Mt. 2035
4460 Broad River Rd.
Columbia, S.C. 29210

MY COMMISSION EXPIRES

My Commission Expires
March 5, 2018

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

THE STATE)
-vs-) TRANSCRIPT OF RECORD
JERMAINE TYRONE FULLER,) 2009-GS-46-01679
DEFENDANT.) AUGUST 27, 2009
YORK, SOUTH CAROLINA

B E F O R E :

THE HONORABLE LEE S. ALFORD, JUDGE.

A P P E A R A N C E S :

E.B. SPRINGS, IV, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN MOBLEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1 (PROCEEDINGS, AUGUST 27, 2009)

2 THE COURT: Solicitor?

3 MR. SPRINGS: Standing here dressed in orange is
4 Mr. Jermaine Tyrone Fuller, he's charged with robbing the
5 Sharon branch of the First Citizens Bank on December the 4th
6 of last year.

7 In January he retained attorney John Mobley, who
8 is standing here next to Mr. Fuller.

9 The charges here are armed robbery on
10 2009-GS-46-1679; possession of a firearm during that armed
11 robbery, 2009-GS-46-1680; kidnapping, on 1681; and criminal
12 conspiracy, on 1682.

13 Mr. Mobley has a motion. And after Mr. Mobley has
14 articulated his motion, I would like to put something on the
15 record.

16 I'll turn it over to attorney John Mobley.

17 THE COURT: Mr. Mobley?

18 MR. MOBLEY: May it please the court, Your Honor,
19 for the record, this is John Mobley here, attorney for the
20 defendant Jermaine Fuller.

21 This is a motion to be relieved, Your Honor. I am
22 making this motion at the request of my client.

23 With respect to the particulars, in order to
24 respect attorney-client confidentiality and the fact that
25 this courtroom is open, I generally do not get into the

1 details of the nature of my client's issues. However, this
2 is my client's desire, Your Honor, to be relieved.

3 I have indicated to him, Your Honor, that that's
4 why we are here today, that I'm in no way making any type of
5 disparaging remarks about my client Mr. Fuller. I'm simply
6 asking the court to relieve me, because my client desires
7 other counsel, Your Honor.

8 I would ask the court -- I believe my client has
9 the resources to obtain a new attorney, and I would ask the
10 court to appoint counsel for my client, Your Honor.

11 THE COURT: You do not believe he has the money,
12 is that what you are saying?

13 MR. MOBLEY: Correct, Your Honor. My last court
14 hearing was I was appointed to represent my client.

15 MR. SPRINGS: May I put something on the record?

16 THE COURT: Yes, sir.

17 MR. SPRINGS: Your Honor, the case is about nine
18 months old now.

19 Mr. Fuller had a 15 year plea offer, which expires
20 on Friday, September the 11th, in about two weeks. The good
21 Lord above can't get him a plea offer after that day and we
22 are going to go to trial the November 2nd term.

23 The decision he's getting ready to make here at
24 this point in time are the biggest decisions that he's made
25 since December 4th last year, basically the two weeks to go

1 on that plea offer. He is making a big decision. I want to
2 put that on the record and I want to make it real clear
3 there will never ever again be a plea offer after September
4 the 11th.

5 MR. MOBLEY: Just for a -- the plea offer was
6 dated August 25th was the day I received it, and I did give
7 it to my client this morning.

8 I can tell the court I did not go into any great
9 detail with discussion with regard to my client. It's my
10 opinion, based on my recent interaction with my client, he
11 didn't really have any confidence and desire to discuss it
12 with me. I did want to make sure I communicated it to him,
13 Your Honor, but that's -- I only received that offer a
14 couple days ago.

15 THE COURT: Okay. Mr. Fuller, what's your
16 position? You have heard Mr. Mobley say that he doesn't --
17 that you do not want him to represent you any more. He,
18 therefore, is asking to be relieved.

19 What is your position.

20 THE DEFENDANT: Okay. Are you basically asking me
21 my reasons for relieving him?

22 THE COURT: No, I'm just asking you what -- do you
23 want the court to relieve him, or no?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And why do you want the court to

1 relieve him?

2 MR. MOBLEY: Your Honor, I guess we are going to
3 start -- I mean, I'm always in a difficult position when a
4 client starts making -- stating his reasons, because on the
5 one hand I don't want to say anything disparaging about my
6 client or breach confidentiality, but they need to respond.

7 THE COURT: Well, I understand that, and I don't
8 want him to talk to me about the case itself.

9 THE DEFENDANT: I can speak to you concerning --

10 THE COURT: If he feels like he has a problem with
11 your representation, not maybe your advise, but just your
12 representation about what you have or haven't done for him,
13 I guess that is what I meant.

14 MR. MOBLEY: That is what he's indicated.

15 I can relay to the court he's indicated to me he's
16 not satisfied with my representation, Your Honor, but I
17 would just rather my client not have to risk -- to say
18 anything that may somehow -- even though the court is not
19 asking those kind of questions.

20 THE DEFENDANT: I can explain my position without
21 jeopardizing my case, if that's what you want.

22 MR. MOBLEY: With all respect to the court, Your
23 Honor, I think -- you know, unless the court needs a few
24 more details, I mean, I have indicated that my client is not
25 satisfied with my representation.

1 THE COURT: Well, let me tell you the problem I
2 have, Mr. Mobley.

3 MR. MOBLEY: Yes, sir.

4 THE COURT: If you have been paid in this thing,
5 I'm not likely to let you out.

6 MR. MOBLEY: I understand that, Your Honor.

7 THE COURT: That's my policy, because that's the
8 policy the Chief Justice has put out. If an attorney gets
9 paid in the case, you stay in it, okay.

10 What I want to know is if he -- I don't know how
11 much he's paid you, or if he's paid you; how much he's paid
12 you, if he retained you, or whatever, but what I want to be
13 sure is that -- we have gone all of these months and this
14 thing -- I think they are moving along towards trial with it
15 and making an offer that they are only going to leave open a
16 couple of weeks. I just want to be sure --

17 MR. MOBLEY: May we approach, Your Honor?

18 THE DEFENDANT: Your Honor, could I feel free just
19 to explain briefly the situation between us and why I am
20 reprimanding him? It seems like he doesn't want to discuss
21 it, but I would like to state the facts on this.

22 MR. MOBLEY: I would be glad to do that. I would
23 ask the court to be clear, because, I mean -- I would be
24 required to respond to certain things that he's staying,
25 because there is one matter I need to address the court I

1 don't want to say in open court regarding this whole
2 situation, but, you know --

3 MR. SPRINGS: This is something I'm aware of, Mr.
4 Mobley approaching to tell the court what his concern is.

5 MR. MOBLEY: And I think, quite frankly, Your
6 Honor, depending on -- I mean, if we start getting into
7 specifics and I'm required to respond, it might necessary to
8 do all this ex parte, based on some of the conversations my
9 client and I have had about this case in order for me to
10 give an appropriate response to certain things, and
11 that's -- and that's the reason I was trying to avoid,
12 because we have had some conversations about this case and
13 I'm just trying to avoid --

14 THE COURT: I'm thinking it through, counsel.

15 I don't want to get into the merits of the case
16 and what y'all discussed about defenses or whether it's
17 appropriate to present a defense or not. I don't want to
18 get into those kind of issues that would involve
19 attorney-client privilege.

20 I'm just trying to decide if -- you know, what I'm
21 asking him is -- what I was asking him his position is you
22 haven't done something or haven't come to decision to talk
23 to him, or something like that.

24 THE DEFENDANT: Yes, sir, that is what I would --

25 THE COURT: That's your position?

1 THE DEFENDANT: Yes, sir.

2 MR. SPRINGS: May we approach.

3 THE COURT: Yes, sir.

4 (Whereupon, the attorneys approached the bench for
5 an off-the-record discussion)

6 THE COURT: All right. Mr. Fuller, excuse me, if
7 I relieve Mr. Mobley, what are your plans?

8 THE DEFENDANT: Your Honor, I have to hire a new
9 attorney.

10 The thing is I haven't been able to hire one
11 because they wouldn't take over the case with him still
12 being on it. I don't know exactly how long that would take,
13 but I do have a couple in mind, but that --

14 THE COURT: Do you have the ability to pay for
15 one?

16 THE DEFENDANT: Honestly, the money I paid him and
17 not being able to run my business since I have been in here,
18 it would be difficult, but my mother would assist me.

19 THE COURT: Let me -- here is the thing I want to
20 be sure you understand.

21 I think I'm going to relieve Mr. Mobley under all
22 the facts and circumstances of this case. That's your wish.
23 That's his wish, and so I think I'm going to go ahead and
24 relieve him as your attorney.

25 Here is the important thing, though, that you need

1 to understand, and I want to be sure you understand. They
2 have made an offer in your case, okay? You are looking at
3 this -- you are charged with armed robbery, which carries a
4 minimum up to ten up to thirty, if they convict you. The
5 gun law violation on top of that is another five.
6 Kidnapping up to thirty, I believe. All of those are no
7 parole, so you would be looking at thirty, sixty,
8 sixty-five; criminal conspiracy, another five. That's
9 seventy. So you would be looking at total of seventy years.
10 They have made -- I think I'm right about that. I may not
11 be quite right about that, but --

12 THE DEFENDANT: I understand that.

13 THE COURT: -- based on what he just told me today
14 in court, I think that would be about right.

15 Now -- and they have made an offer of fifteen
16 years on these charges.

17 They are saying that -- and they can do this.
18 They have an absolute right to do this, and there is
19 nobody -- I have had defendants fire one attorney and try to
20 get another attorney if they think they can get a better
21 deal. The only one that can make the deal is the
22 solicitor's office. They can make a recommendation.
23 Otherwise you have to plead straight up or go to trial and
24 defend yourself at trial and let the State prove their
25 charges against you. And so jury may find you guilty, may

1 find you not guilty on some or all of these charges. But,
2 in -- but, in any event, only the solicitor can make an
3 offer or not make an offer. No attorney can make -- he says
4 he's made an offer of fifteen. He's not going to change it,
5 and it's going to expire on September the 11th. And this is
6 August the 27th. So you are going to have to make some
7 decision about that, and you probably need to do it with
8 some advice from counsel.

9 THE DEFENDANT: That's right.

10 THE COURT: Yeah.

11 So you don't have a lot of time to work with.
12 That's what I'm trying to make you understand.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So if you are going to hire an
15 attorney, if you have the ability to hire an attorney, you
16 need to go ahead and hire one pretty quickly.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And if you are not going to be able to
19 hire one, then we'll have to appoint somebody to represent
20 you, but you are going to have request that be done.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: But it's crucial. He says he's not
25 going to -- and they are not going to -- and he won't, okay,

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) COURT OF GENERAL SESSIONS

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4
5 STATE OF SOUTH CAROLINA,)
6 Plaintiff,) TRANSCRIPT
7 versus) OF
8 JERMAINE TYRONE FULLER,) RECORD
9 Defendant.) 2009-GS-46-3663

10
11
12 October 9th, 2009
York, South Carolina

13
14 B E F O R E:

15 THE HONORABLE JOHN C. HAYES, III, Judge.
16

17 A P P E A R A N C E S:

18 E.B. SPRINGS
19 ASSISTANT SOLICITOR
Attorney for the State
20

21
22 JANET RICH
Circuit Court Reporter
23

24 Transcribed by Pamela E. Green, Circuit Court Reporter
25

1 P R O C E E D I N G S

2
3 MR. SPRINGS: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. SPRING: Your Honor, we're here to discuss the case
6 of the State versus Jermaine Tyrone Fuller who stands here
7 before you dressed in orange.

8 He's charged with armed robbery, possession of a pistol
9 during the commission of the violent crime of armed robbery,
10 kidnapping, and criminal conspiracy related to an alleged
11 robbery of a bank, a First Citizen Bank branch, on December
12 the 4th of this last year.

13 He was arrested on those charges December 4th of last
14 year, and, for whatever reason, the police neglected him, to
15 charge him with our South Carolina crime of entering a bank
16 with intent to steal commonly known as bank robbery. The
17 Grand Jury of York County has seen fit to indict him on that
18 charge. I'm holding a true billed copy of that indictment.
19 It charges Jermaine Tyrone Fuller with entering a bank with
20 intent to steal. It's on Indictment Number 2009-GS-46-3663.

21 Let the record show that I am handing, passing to
22 Mr. Fuller a true bill copy of that indictment, and the
23 indictment reads the defendant, Jermaine Tyrone Fuller, did,
24 in York County, South Carolina, on or about December 4th,
25 2008, did unlawfully enter a building occupied as a bank,

1 depository, or building and loan association with the intent
2 to steal money or securities either by force, intimidation,
3 or threats in that the defendant did enter the First
4 Citizens Bank branch bank located in Sharon, South Carolina
5 and robbed the tellers at gun point of monies belonging to
6 First Citizens Bank all in violation of Section 16-11-380
7 Code of Laws of South Carolina, 1976 as amended.

8 I have served Mr. Fuller with a copy of that. I'm not
9 going to arraign him. He has no attorney. He was charged,
10 as I said, on December 4th, 2008, with this crime. In
11 January he retained a very good attorney named John Mobley.
12 In August he fired Mr. Mobley.

13 We came before Your Honor, on September 9th, I did and
14 Mr. Fuller did, and I put on the record that he, we intended
15 to call his case for trial November the 2nd. Your Honor
16 inquired as to what he was gonna do about a lawyer. He said
17 he was gonna hire somebody. You asked him if he wanted
18 appointed counsel, he refused appointed counsel, and on
19 September the 9th you, you let him know that November 2nd
20 would be coming and he needed to, to get busy getting an
21 attorney or he was gonna end up representing himself. I
22 have seen -- no one's contacted me as representing him. So,
23 at this point we're moving on towards November the 2nd and
24 he has no attorney.

25 One or two other issues, however, are sort of in the

1 mix. Mr. Turner, I'm sorry, Mr. Fuller, weighed a healthy
2 190 pounds when he came into our detention center. He
3 weighs about 105 now. He doesn't eat much. In fact, the
4 detention center sent me an e-mail, I don't want to show you
5 something that Mr. Fuller hadn't seen, indicated he flushes
6 his food and he tells them he's fasting, and he just doesn't
7 talk much about not eating, but he doesn't eat a lot of
8 food.

9 I suspect he's doing that in an attempt to be taken to
10 a hospital where he'll have better opportunity to make an
11 escape. He's had one earlier incident related to an attempt
12 to be taken to the hospital, and he was taken to the
13 hospital under heavy guard. And if that's all this fasting
14 is about, just trying to get to a hospital so he, he can
15 escape, that's fine. That's not a problem. He'll be under
16 guard.

17 But I am concerned that maybe there's something
18 mentally going on that maybe the, the Court should speak to
19 him and make sure that he's competent and in his right mind.
20 He has seen fit to report me to disciplinary council at the
21 bar, and told them that I'm, I'm opening his mail and more
22 worrisome to me in that I am rushing him into trial without
23 an attorney. I want him to have an attorney.

24 So, I've kind of got those concerns that maybe, maybe
25 there's a question of his competency since he's sort of

1 starving himself of his own will, and he thinks I'm opening
2 his mail, which I'm not, and he thinks I'm rushing him into
3 a trial without an attorney, which I'm not. I just need to
4 get this case moved. We're coming up on a year now, Your
5 Honor.

6 THE COURT: All right. Mr. Fuller, you still haven't
7 hired an attorney?

8 THE DEFENDANT: That's something that my mother's
9 taking care of. But, you know, I'm caught up here
10 unexpectedly. I'm expecting to come to trial on November
11 the 2nd and 3rd, Monday and Tuesday. I'm, I'm really
12 unaware of why we are having this meeting right now.

13 THE COURT: Well, it appears to me -- of course, I
14 didn't call the meeting. So, I'm having to rely on---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I haven't had any more knowledge of it
17 than you have.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It appears that Mr. Springs wanted to serve
20 you on that additional entering a bank charge.

21 THE DEFENDANT: Okay.

22 THE COURT: So, you got that additional charge.

23 THE DEFENDANT: Uh-huh.

24 THE COURT: And he wanted to call to the Court's
25 attention that you still, as far as they know, have no

1 attorney and that they still intend to call your case on
2 November 2nd --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- and I've already talked to you before
5 about your right to have an attorney and the danger of
6 representing yourself and going to trial without an
7 attorney.

8 Do you recall that, do you not?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you recall that I told you it was
11 dangerous for a non-attorney to represent themselves.

12 THE DEFENDANT: That's right.

13 THE COURT: And you understand that?

14 THE DEFENDANT: Absolutely.

15 THE COURT: So -- but you do understand that, in less
16 than 30 days, if you don't have an attorney, you're going
17 to be going to trial and having to represent yourself?

18 THE DEFENDANT: Yes, sir. Yeah, I actually wrote a
19 letter to him and he, he responded. It was concerning
20 negotiation. He said he wasn't interested in that. So,
21 you know, whatever happens on the day of trial, you know,
22 is gonna happen. I'll be prepared and I have my mind made
23 up. But I do want you to know beforehand that I've written
24 him asking to speak to him in private, you know.

25 I haven't had the opportunity. I'm always called up

1 here in front of the Court, and I, I can't discuss anything
2 with him, which I would like to do. But I'm letting you
3 know that I did make an attempt to do that.

4 So, you know, if I come on trial day and I say I'm not
5 prepared to go to trial, let's whatever, take a plea, you
6 know, and you guys have to pay money and get up a jury, I do
7 want you to know that, you know, that wasn't my intentions.
8 I did try to intervene before that happened, but he hasn't
9 allowed an opportunity for us to sit down and discuss
10 anything.

11 THE COURT: All right. And I guess it's your business
12 and not mine, but do you want to tell me anything about why
13 you're fasting or just keep it to yourself?

14 THE DEFENDANT: I don't think that's relative to my
15 legal---

16 THE COURT: All right. Well, you don't have to tell
17 me anything about that.

18 THE DEFENDANT: No, I don't think that's relative.

19 THE COURT: Everybody's concerned about your health
20 though.

21 THE DEFENDANT: Yeah, and actually I weigh 135 pounds.
22 I was weighed the other day and actually I did weigh 190.
23 I weighed 170 when I came in here, yeah. But --.

24 THE COURT: Well, I don't see any issue about
25 competency at this time. I mean he's conversing --

1 Mr. Fuller's conversing with me very intelligently. Maybe
2 not -- I'm not gonna say very complete wisdom because I do
3 think you need to be getting you an attorney, but---

4 THE DEFENDANT: Absolutely. But, you know, my hands
5 are tied.

6 THE COURT: I understand that.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I understand that. But I -- so, I mean I
9 think Mr. Fuller fully understands what his situation is,
10 his right to an attorney, his danger of self-representation.
11 He understands he's going to trial on November 2nd, going to
12 trial, and he seems to fully understand Mr. Springs' job.
13 He understands the Court's job. And, so, I don't see any
14 competency issue at this time and --.

15 MR. SPRINGS: Thank you.

16 THE COURT: I just -- Mr. Fuller, the last thing I'm
17 going to say to you is you're still on tap for November 2nd
18 for trial.

19 THE DEFENDANT: Yes, sir, I'm prepared.

20 THE COURT: All right. Thank you.

21 MR. SPRINGS: Thank you, Your Honor.

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

25

Jermaine T. Fuller #338130
B.R.C.I. Mlt. 2035
4460 broad River Rd.
Columbia, S.C. 29210

February 18, 2014

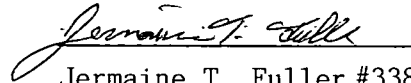
Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: State v. Jermaine T. Fuller, Case No. 2009-147686
PETITION FOR REHEARING

Dear Ms. Kitchings:

Please file the enclosed motion for rehearing in the above referenced case, and return the extra copy clocked stamped in the provided envelope.

Respectfully,



Jermaine T. Fuller #338130

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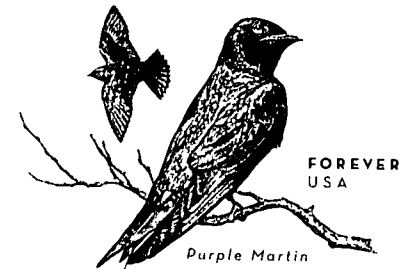
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SC Court of Appeals

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WARDEN

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