State of South Carolina
In The Court of Appeals

Appeal From Greenville County
Court of General Sessions

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SC Court of Appeals

The Honorable Letitia H. Verdin,
Circuit Court Judge

Appellate Case No. 2013-000919

The State of South Carolina.___Respondent,

vs.

Nathaniel Glenn, Jr.,___Defendant.

Brief of Opposition

Nathaniel Glenn, Jr.
Pro Se
Lee C.I.
990 Wisacky Hwy.
Bishopville, S.C. 29010

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Authorities Cited

Cases: Pages

Statutes and Rules

Statement of Issue on Appeal

The circuit court judge erred when denying the Defendants motion for New Trial pursuant to Rule 29(b), SCRCrimP. of after-discovered evidence of false testimony.

Summary Of The Case

Defendant Glenn was tried before the Honorable Edward W. Miller July 13, 2004, by a trial by jury against State Solicitor Joyce K. Monts.

The State's two main witnesses were Detective Melissa Lawson and informant Chadwick Teasley. He was charged with trafficking (14) grams of cocaine, title (44-53-370). His trial Atty. was James Goldsmith, Esquire of the public defenders office of Greenville County.

Defendant was arrested October 3, 2002, for both alleged trafficking charges of July 16, 2002, and August 2, 2002. The narcotics agents seized his vehicle the day of his arrest because he would not cooperate with them by setting some one up.

After (21) days in the County jail, he made bail and was then arrested for conspiracy to trafficking from the date of January 1, 2000, and pending, by the same Greenville Narcotic Agents the day of December 16, 2002.

December 17, 2002, he was indicted for the State trafficking and the federal conspiracy to trafficking the same date by known and unknown witnesses. He was then transferred to the Anderson City Jail after his arraignment by the federal gov.

He was then represented by Attorney David Plowden and Benjamin Stepp of the Federal Public Defenders Office. And after several days of trial in the Federal District Court of Greenville County for conspiracy to trafficking facing (20) to life by several unknown witnesses, including statements by informant Chadwick Teasley, he was acquitted January 29, 2004, for the

alleged charge of the "same act" in the State Court.

Eight to ten days after his relief of being acquitted from the federal district court, he was summoned to trial in the State Court of General Sessions for trafficking of the "same act."

He appeared at the courthouse not understanding why was he being summoned to court. A solicitor or officer of the court said there will be a continuance because my appointed Attorney, James Goldsmith was snowed in at his home in Asheville, N.C.

Thirty days later after being summoned to court again he met with Goldsmith and he told the Defendant that he thought these charges were possibly the same as his federal charges that he was acquitted of, but he'd ask for a continuance and will get back in touch.

Defendant applied himself by calling a private attorney for help, Michael Brown of Spartanburg County. He called Goldsmith's office several times and Goldsmith failed to return his calls and the Defendant's calls until a week before his trial. Defendant again had requested for discovery material in reference to the video tape, Goldsmith stated it was in his office and the public defenders office was closed for the holidays until Tuesday, the day of trial July 13, 2004.

Goldsmith would not mail him the evidence, nor would he make time for the Defendant to allow him to visit his office in Travelers Rest, S.C. and Asheville, N.C.

The day of trial, the Defendant conversated with Goldsmith in the hallway of the courthouse telling him that he was in the

process of hiring Michael Brown, Attorney from Spartanburg County and that he was going to ask the judge for a continuance. He then asked Goldsmith about the discovery material and the video tape that Goldsmith had not shared with him.

Goldsmith stated that he didn't have it with him but it didn't appear to show anything. They both attended the court-room.

Judge Miller asked were there any early motions requested before trial. As the Defendant had began to stand, Goldsmith pat him on the shoulder and stated that I'll ask for your continuance.

He then stated to the Judge, that, he has full discovery from the solicitors office and he's prepared to go forward today, on Mr. Glenn behalf and his behalf alone, he has asked me to move the court for a continuance to allow him to retain Mr. Brown. (trp. 4)

Judge Miller then denied his continuance after the States objection and Goldsmiths readiness for trial. Defendant was startled of attorney Goldsmith's statement, knowingly that there was no evidence shared with him at all, not knowing what he was facing or what the charge of (44-53-370) had meant as Goldsmith only pulled out an indictment from a blank folder and writing tablet.

He then whispered to the solicitor asking does her witness have a rap sheet. Defendant was upset and lost all in one, not knowing what to do. As trial went along, Detective Lawson testified about her job discription and what it is that they do to make an arrest of a certain type of drug from a mid-level dealer to make an arrest of the higher-up dealer of that particular drug. (trp. 25 and 26).

And she pointed out at the Defendant as being the higher-up dealer of Teasley's arrest for cocaine. Then she testified that informant Teasley was arrested for cocaine the summer of 2002, and he decided to work to dimiss the charges.

Solicitor Joyce Monts then entered a VHS video tape for the State's evidence, the Defendant had requested for his attorney to object and Goldsmith ignored him constantly and then asked the judge could he move to another seat to watch the video that was being played facing the jurors. Defendant was ignored by his attorney of the request to object to a filming that his attorney had refused to let him view.

Secondly, informant Teasley testified and the solicitor had asked identical questions of his arrest for cocaine the summer of 2002, as though the Defendant was his supplier of his past arrests. And the Defendants attorney asked the same questions in reference to Teasley's prior arrest for cocaine.

And last during the solicitors closing argument she stated that Teasley knew that he could have gotten prison time for his cocaine distribution but he dicided to work and that know warrant was never served upon him.

Goldsmith's closing argument was of similar dictation in reference to Teasley's arrest for cocaine. The jurors had went into deliberations then a short while later, they returned to view the video footage again a second time. When the video was being played, rewinded and paused for the jurors, the Defendant was left in wonder of what was the video about, because there was completely "NO" evidence shared with the Defendant at all.

To conclude this summary. the Defendant was found guilty and was then sentenced to (27) years (85) percent in prison. Several years past after multiple request for the discovery material and a copy of the video footage. An incomplete discovery file was given from appointed (PCR) attorney Rodney Richey. Then the Defendants Grandfather hired attorney Susan Ross, to whom shared the same identical documents and witnessed a incomplete clipping of the video footage ten minutes before his (PCR) hearing before Judge Welmaker.

End result. post conviction hearing was denied. then Susan Ross. Esquire mailed a CD of the video footage to the Defendant. He was allowed to watch the entire video footage at Perry C.I. and then discovered the tampering of the video footage. (exhibit upon the record).

Years later he was transferred from Perry C.I. to McCormick C.I. of Greenwood County. The month of July 2009. he met with an inmate by the name of Timothy Murray. to whom that he knew from elementary school and the Defendant had discussed the outcome of his case with Murray in reference to Teasley's testimony when he lied about the Defendant selling him some drugs, and about Teasley having a cocaine charge that he was trying to get out of.

That's when Murray told him Teasley was not arrested for drugs the summer of 2002. because he was there with him at the night club when Teasley and his cousin was arrested. And the Defendant said [redacted] way man because the solicitor confirmed their testimony that the detective and Teasley had made through-out the entire trial.

Wherefore, the Defendant had asked inmate Murray would he write an affidavit to what he told him and he did. The enclosed notarized affidavit that the Defendant had filed with the Greenville County Clerk of Courts Office before the hiring of Attorney Tommy Thomas, Esquire, confirms the exhibits of Teasley's arrest warrant, drug laboratory report and date of disposition sheet illustrates the Defendants after-discovered evidence.

The above summary is of need to explain why the Defendant never considered challenging the introduction of the two main witnesses testimony as perjury. The Defendant had failed to bring this issue along with further and other issues because they were unknown to his knowledge and had clearly misled the judge, jurors and himself.

Defendant has discovered an on-the-scene eyewitness of Teasley's arrest, that the State had introduced as being the total opposite as to mislead the judge from ruling a possible direct verdict and to mislead the juror's from finding the Defendant not guilty because of their witnesses false testimony through-out the entire trial.

Defendant was left defenseless of the where-abouts of the alleged charge until after his trial, beccuse the Defendant was an employee at the Crowne Plaza Hotel as well, before informant Teasley was hired to work at the Crowne Plaza Hotel and Know one had knowledge of the Defendants employment.

Defendant has filed a Rule 29(b) Motion upon After-Discovered Evidence and a Brady violation, namely, that the solicitor had known about the untruthfulness, but had failed to disclose it. Defendant asserts that had he known about the false testimony he could have raised that issue to the trial judge himself during a recess of trial.

Argument

The Defendant submits that the record establishes that he did not know about the material evidence of false testimony at the time of his trial on the date of July 13, 2004. The record in this case exposes two types of Brady violations. The first is failure to disclose exculpatory or impeachment evidence. See Bagley (disavowing any difference between exculpatory and impeachment evidence for Brady purposes). The second is failure to disclose evidence that reveals the intentional use of false evidence to obtain a guilty verdict. See United States vs. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976). (as here)

Page (4), paragraph (1) of the States Initial Brief of Respondent points out that Defendants Counsel did not raise the false testimony under oath issue to the Circuit judge for his New Trial.

(a) Defendant hired attorney Tommy Thomas, Esquire July 11, 2011, approximately (54) days after the filing of his original motion for Rule 29(b), that was clock-dated and stamp-copied filed May 19, 2011. (exhibit attached of letters from Tommy Thomas's law firm in reference of retainment).

See Harvey vs. Strickland, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002)(amendments should be liberally allowed when no prejudice to the opposing party will result). Appellant states that Mr. Thomas Alter or Amend Motion, line (1) states; that an original and Amended Motion for New Trial based on after-discovered evidence was filed with the court.

Page (4), paragraph (2), the States contention that the Defendant's after-discovered evidence was available prior to and during trial testimony does not qualify as after-discovered evidence.

(a) Defendants after-discovered evidence was given to him by an inmate by the name of Timothy Murray, to whom was with informant Teasley the night of his arrest. (exhibit attached, affidavit in reference to on-the-scene arrest. "the court may receive proof by affidavit, depositions, oral testimony, or other evidence...." S.C. Code Ann, Sub section 17-27-80 (1985). Whether to admit such evidence is within the courts discretion. Beckett vs. State, 278 S.C. 223, 224, 294 S.E. 2d 46, 47 (1982).

Page (5), paragraph (2), the State alleges that Defendants after-discovered evidence does not support enough proper evidence for new trial and the circuit judge did not error by denying his motion.

(a) Defendant argues that the State's failure to prevent their two main witnesses from testifying falsely prejudiced the Defendants case through-out his entire trial. See Stephenson vs. State, 424 S.E. 2d 816 (1992). "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good

faith or bad faith of the prosecution." Brady vs. Maryland, 373 U.S. 83, 87 (1963). A Brady claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Sheppard-vs. State, 357 S.C. 646, 659, 594 S.E.2d 462, 470 (2004). Favorable evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Id. at 660, 594 S.E.2d at 470.

Page (6) paragraph (1) States rebuttal refers to the confidential informant's arrest by the Greenville County Sheriff's Department for methamphetamines and detective Lawson's and Informant Teasley's false testimony.

(a) Defendant doesn't dispute that the informant was arrested for methamphetamines by the Greenville County P.D., he states that the result of the drug examination report states that there was "No Control Substance Detected."

(b) Defendant does not dispute that Detective Lawson's testimony of not serving an arrest warrant against the informant, thats because the records clearly states that there was "no arrest made against the informant Chadwick Teasley for cocaine the summer of 2002, by the Greenville City P.D., nor the Greenville County P.D." as testified. (trp. 47).

Defendant contends that the circuit court erred by not ruling upon his May 19. 2011. Rule 29(b) Motion and Exhibits that follow his argument of prosecutorial misconduct of the solicitor confirming her two main witnesses false testimony. A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. U.S. vs. Bagley, 473 U.S. 667, 678 (1985). The knowing use of perjured testimony is subject to the materiality standard of review: "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. at 682.

The actions of the solicitor deprived him of the ability to make an knowing and intelligent decision concerning the choice to raise an objection against false testimony.

Now armed with the knowledge that was withheld from him by the prosecution, the Defendant feels that this action by the State may well have cost him many years of incarceration and the accompanying inestimable damage to his family and his health.

In addition, the solicitor made statements during closing argument concerning her two main witnesses testimonial evidence in this case which strongly suggested that their statements in this case was consistent with the prosecution's theory of the case. The Defendant would submit that the solicitor's comments in open court concerning

both witnesses false statements of material evidence in this case violated her duty of Candor Toward the Tribunal. Rule 407.3.3 of the Rules of Professional Conduct, SCACR, addresses the issue of Candor Toward the Tribunal and states in relevant part.

(a) A lawyer shall not Knowingly:

(1) Make a false statement of material fact or law to a tribunal;

(4) Offer evidence that the lawyer knows to be false....

"The prosecutor was actively involved in witness manipulation and suppression of affirmative evidence tending to show the defendant's innocence." U.S. vs. Fisher, 711 F.3d 460 (2013). (as here) Solicitor Joyce Monts was actively involved in misleading the judge, jurors and the Defendant by confirming the State's two main witnesses false testimony, which prejudiced the defense from being able to challenge the credibility of the witnesses testimony.

Conclusion

The Defendant is thankful that he has been granted the opportunity to be heard by the Court of Appeals. He prays that this Court will allow him to go forward with his efforts to clear his name and resume life with his family.

Based on all the foregoing reasons and authorities, the Defendant now respectfully asserts that the lower court erred in denying his Rule 29(b) Motion for after-discovered evidence and would pray that this motion is granted for the afore-mentioned hearing for New Trial.

Respectfully Submitted,
S/ Nathaniel Allen Jr.

Tommy A. Thomas

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May 11, 2011

Nathaniel Glenn #303563
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Glenn:

Please be advised that we have not heard from you in quite some time. We have not been retained to assist you. When we spoke with Mary Pruitt at the end of March, she indicated that she would call back within a week in regard to the money to retain Mr. Thomas, however we have not heard anything back. Please contact this office immediately or have your family contact us if you are planning to retain Mr. Thomas for assistance, so we will hold your file open otherwise we will close your file if we haven't heard anything within fifteen (15) days.

Thank you and we look forward to hearing from you.

Yours truly,

Millie Fore

Millie Fore, secretary to
Tommy A. Thomas,
Attorney at Law

TAT/m

Tommy A. Thomas

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July 11, 2011

Nathaniel Glenn #303563
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Glenn,

I have been retained to represent you regarding your PCR in Greenville County. Please find enclosed an Authorization, as well as a Retainer Agreement for your review and signature. One copy is for you to keep for your files. Please return the signed copy to me.

Kindly return these documents and any other paperwork pertaining to your case that you have to me as soon as possible. We have added our number to your PIN list.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
enclosures

Tommy A. Thomas

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July 27, 2011

Nathaniel Glenn #303563
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Glenn:

I enjoyed meeting with you the other day. One of the things that we discussed is the fact that you believe that this should be a first drug related offense. That your prior drug charge was in 1993. I am going to look into this matter and obtain a copy of your RAP.

You are also concerned about the potential tampering of evidence and that the audio and video was re-recorded on a single VHS tape and that the original evidence was destroyed. I want to give some more thought to this matter as it may be a valid post conviction relief issue.

Lastly, that Chad Teasley testified that he had been arrested for cocaine, which turned out not to be true.

As we discussed, you have filed a Motion for a New Trial, pursuant to Rule 29 (b) of the Criminal Rules. I believe that this may be the best way to approach these issues and probably the quickest way to get this matter into Court.

Thank you for allowing me to represent you in this matter and I will forward my findings with your RAP sheet as soon as it is obtained.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem

State of South Carolina,
Plaintiff,

vs.

Nathaniel Glenn, Jr., #303563,
Defendant.

Case No. 2013-000919

Proof of Service

I certify that I have served the Brief In Opposition to Jenny A. Kitchings, Clerk of S.C. Court of Appeals on Salley W. Elliot, Attorney General by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to Salley W. Elliot, Attorney General, Post Office Box 11549, Columbia, S.C. 29211-1549, on the date of May 15, 2014.

S/ Nathaniel Glenn Jr.
Nathaniel Glenn 303563
Lee C.I.
990 Wisacky Hwy.
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cc: Filed
cc: Christina J. Catoe
Assistant Atty. Gen.

Dear Clerks Office, May I please request to have my filed documents of enclosures to be clock-dated and stamped-copied to be forward to the address below. Thank You

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