THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-400-7884

Raqib Abdul Alamin ———————————— Appellant,

v.

State of South Carolina ———————————— Respondent.

Petition For Writ of Certiorari

INITIAL BRIEF OF APPELLANT

Raqib Abdul Al-Amin

pro-se

MCI / 4-B-151

386 Redemption Way

McCormick, S.C. 29899

SA.

TABLE OF CONTENT

Table of Case 2

Statement of Issues on Appeal 5

Statement of the Case 6

The silent facts 8

Argument I 12

Argument II 25

Conclusion 27

TABLE OF CASES

Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991) 18

Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008) 12

State v. Alamin, 343 S.C. 405, 578 S.E.2d 32 (2003) 12, 14

State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979) 5, 13

State v. Coleman, 389 S.C. 57, 389 S.E.2d 659 (1990) 18

State v. Cole, 337 S.C. 622, 525 S.E.2d 246 (2000) 5, 24, 26

State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992) 15

State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1991) 12, 13, 17

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012)

State v. Howard, 396 S.C. 173, 720 S.E.2d 511 (2012) 26

State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (2000) 12

State v. McMillion, 349 S.C. 17, 561 S.E.2d 602 (2000) 16

State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980) 18

State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991) 17

State v. Terry, 339 S.C. 352, 529 S.E.2d 274 (2000) 14

Boseman v. Bazzle, F. Supp. 2d 2008 WL 3850703 21, 22

Akron Center for Reproduction Health, Inc., 462 U.S. 416, 103 S.Ct 2481 (1983) 25

Bouie v. City of Columbia, 378 U.S. 347, 84 S.Ct. 1694 (1964) 24

Crane v. Kentucky, 476 U.S. 683, 106 S.Ct 2142 (1986) 13

Holmes v. South Carolina, 574 U.S. 319, 126 S.Ct 1727 (2006) 12, 13, 14

James B. Distilling Co. v. Georgia, 501 U.S. 529, 111 S.Ct 2439 (1991) 26

Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2575 (1986) 23

Kyles v. Whitley, 514 U.S. 419, 115 S.Ct 1555 (1995) 21

Lego v. Twomey, 404 U.S. 474, 92 S.Ct 619 (1972) 17, 20

Slack v. McDaniel, 529 U.S. 473, 120 S.Ct 1595 (2000) 26
Teague v. Lane, 489 U.S. 288, 109 S.Ct 1060 (1989) 25

STATEMENT OF ISSUES ON APPEAL

1. Circuit Court Judge Misapprehend the *Caskey* five-part test governing application for post-conviction relief based on (physical) after-discovered evidence that was material to material to applicant's guilt or innocence.

2. Appellate counsel failed to petition the South Carolina Court of Appeals to remanded to the trial Court for an on-the-record *Colf* balancing test.

STATEMENT OF THE CASE

Applicant received information on May 17, 2011, when he received a sworn statement from Daniel Brown by his wife. Applicant file a post-conviction relief application in Richland County Court of Common Pleas, June 7, 2011.

Respondent made a Return and Motion to Dismiss dated September 27, 2011, requesting that the application be summarily dismissed.

Applicant responded to the Return, September 30, 2011, entitled "Petitioner's (sic) Objection to the Respondent (sic) Return and Motion to Dismiss."

Honorable James R. Barber, III, issued a Conditional Order of Dismissal dated May 9, 2012, and filed May 11, 2012, provisionally denying and thirty (30) day's from the date of service of said Order to show why the dismissal should not become final dated May 30, 2012.

Applicant responded, June 6, 2012 by pro-se motion "Petitioner's Response To Conditional Order / Why It Should not Become Final."

On June 19, 2012, Applicant was able to receive the sworn affidavit from his wife (and daughter) when and how this physical witness came to light.

On October 17, 2012, Applicant submitted, by motion: "Notice and Motion [for] Inordinate Delay [of] Final Order." This created a dilemma for Applicant to correct the process until a final ruling. Moreover, constitutes unfair prejudice and undue tendency for the Court to make a decision on a improper basis.

Final Order was filed with the Clerk of Court, November 8, 2012.

The Silent Facts

The Applicant and his wife, Audrey, were in a strained relationship. The Applicant rented a sperated apartment across town so that he might, temporarily, achieve some personal "space." He had been living at Churchhill Apartments barely a month when his life came apart, after he casually met a woman, Elizabeth Pryor, who also lived as Churchhill with her boyfriend James Conyers. The Applicant rented Apt. No. 4 on the ground floor, whereas, Pryor, along with her live-in boyfriend, Conyers, rented Apt. 220, on the second floor.

Pryor, as matters developed, was a "crack whore," who routinly sold her body to almost anyone willingly to remunerate her, so that she could perpetuate crack (cocaine) addiction.

"Crack whores" are notoriously prone to suffer from HIV or full-blown AIDS, due to sexual promiscuity and other vicious habits. The Applicant, thus, studiously avoided any sex with crack whores, so not knowing Pryor's health status, he never had any form of sexual contact with her. On the other hand, it appears that her live-in boyfriend, James Conyers, had no such qualms.

On the morning of August 25, 1997. Pryor came to the Applicant's apartment and asked for food. She report that she was broke, had no food, and that she and Conyers had been quarrelling, and that she was afraid to return to her apartment for fear of physical violence from Conyers.

The Applicant had plans for the day and could not host her. He offered her some food and informed her that she could stay in his apartment for the moment, but that she "had to be gone" before his anticipated return approximately 3 P.M. that day. Where upon, the Applicant and his acquaintance, Daryl Cunningham, departed the apartment complex on foot, neither having any transportation, and heads to the nearest bus to take a bus down-town. During the trip down-town, Cunningham reported that he had to return to the Applicant's apartment because he had left his walkman radio behind.

The Applicant visited a bank at the southern terminus of his visit downtown. (The bank receipt proved his presence at the bank, the time he was there.). However, the Applicant walked to the nearest bus stop, missing the next bus going back to his apartment. Therefore, an half hour passed before he could connect with the <u>next</u> available northbound bus. On his way back Cunningham also caught the same bus.

When he exited the city bus, he and Cunningham <u>parted</u> company. Cunningham cross the street to a neighorhood convenience Store, while the Applicant headed to the pay-phone to make a call, see after-discovered evidence i.e., Daniel Brown. (His trial counsel failed to investigate witnesses, supoena the video-tape of Cunningham's visit to the convenience store or the telephone records which would have prove his presence at the store at the time which would have made it <u>impossible</u> to kill the victim). Then he heads down Main St., not returning back to his

apartment, as Cunningham made a more direct route back to Applicant's apartment. Cunningham testified at trial that Pryor was at the apartment when he returned. Cunningham testified at trial that Pryor was at the apartment when he returned. Cunningham testified, "She let me in," he retrived his radio and departed, leaving Pryor in the Applicant's apartment.

When the Applicant reached his apartment No. 4 the door was unlocked. Entering, he was flabbergasted. His usually-neat apartment was in total disarray. There was blood on the carpet from the open area to the bathroom. Furniture had been knocked askew. In stuned disbelief, he entered his bathroom and discovered the victim's lifeless body slumped head first into the bathtub. Her shorts were pulled down to her knees and bra was elevated so as to expose her breasts. There was abundant blood on her head, face and clothing, as well as on the floor, but no weapon was in sight.

Here, then, is the Applicant, at an odious murder scene--- in his apartment. His mind is reeling. Everything is surreal. He knows that he has a prior conviction for an armed robbery (resulting quite significantly, in no physical injury). He is separated from his wife, attempting, by the passage of time, to heal his rift with her. Now he discovered that there is a dead body in his sanctuary. Matters could not be worse. How in the world is he going to explain this to his wife? Surely, as a convicted felon, he will be a prime suspect in this foul dead. How can he ever explain any of this.

Where is Cunningham? Where is Conyers? Where are Jerry Watkins and Froggy both seen with the victim that day. He is the perfect fall Guy!

In a panic, he wraps the body in a blanket and drags it to the door of the apartment. He must get rid of this body! This is not fair! But why should he be arrested for something he knows nothing about? If he calls the police, which he seriously considers then decides against, he will certainly be arrested.

ARGUMENT

I. Circuit Court Judge misapprehend the Caskey five-part test governing application for post-conviction relief based on (physical) after-discovered evidence that was material to applicant's guilt or innocence.

Our Supreme Court has imposed strict limitations on admissibility of evidence of third-party guilt. State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (2000). Evidence of third-party guilt may be introduced by an accused when it is consistent with, and raises a reasonable doubt of his guilt, Holmes v. South Carolina, 547 U.S. 319 (May 1, 2006); State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). The proposed evidence must be limited to facts that are inconsistent with the defendant's guilt, regardless of strength of the State's case. Id.; Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008). However, before such evidence or testimony can be admitted, there must be proof of a connection with it, a train of facts or circumstance, which tend to clearly point out another person as the guilty party. Id. Mansfield at 82, 264 "remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose." See also, * State v. Alamin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), rhrg denied, cert. denied (2004).

A defendant requesting a new trial based on after-discovered evidence must show that the evidence:

1. It's such as would probably change the result if a new trial was held;

2. Has been discovered since the trial;

3. Could not by the exercise of due diligence have been discovered before the trial;

4. Is material to the issue of guilt or innocence and,

5. Is not merely cumulative or impeaching.

*State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979) (The Test).

The Underlying Case

Appellant assert that the State court and trial counsel's violated his right to have "a meaningful opportunity to present a complete defense." Holmes v. South Carolina, 547 U.S. at 331, 126 S.Ct. 1727 (2006) quoting Crane v. Kentucky, 476 U.S. at 690, 106 S.Ct 2142. In fact, the Supreme Court specifically stated that rule of State v. Gregory, is the type of rule that does not deny a defendant his right to present evidence. 547 U.S. at 328, 126 S.Ct. 1727. Holmes v. South Carolina, preserves Gregory as the appropiate standard for evaluating the admissibility of evidence of third party guilt. The trial judge in this case applied *Gregory erroneously and there was error. See Attached Appendix (App.) page 11-34. In fact, the trial judge could not rely upon Holmes because it was not decided at the time

of the Appellant trial.

In State v. Alamin, the Court of Appeals concluded that the proffered testimony of officer Joe Philip Smith (J.P. Smith), concerning James Conyers living situation and as to the first place police look during its investigation. DNA testing would not clearly point James Conyers or anyone else at that matter as the guilty party. Nor does this evidence show that Applicant's innocent, nor can it reasonably be interpreted to infer such innocence in absence of any allegation or expert testimony that the victim was raped prior to her death. Id., 353 S.C. at 428.

Pursuant to State v. Terry, 339 S.C. 352, 529 S.E.2d 274 at 277 (2000) 'A defendant seeking to testify and make exculpatory statements must face cross-examination. That is a basic rule of our adversary system." The record is clear, Appellant's own counsel damaged the defense case because the closing argument did not support Appellant's account of what had happened. Cf. Ingle v. State, 348 S.C. at 472, 560 S.E.2d at 403 (2002). During Appellant's jury trial dated, February 15-18, 2000 page 528-to 529, Appellant intended to offer testimony to exculpate himself by facing cross-examination. See App. page 39-40. Appellant testified as follow:

"The stop is two blocks [Colonial Dr. see App. page 7] from Main Street, then you have to cross main street to another store that's there and then maybe -- I would say maybe three blocks and a half." Q: "Okay, when you got off, what did you do?" A: "Well, we (Alamin and

Darryl Cunningham) headed back -- It was almost like repeated ourselves. We headed back toward Main street, but at this time. I -- when we got to Main Street and the street (Clarendon St.) -- I'm not familier with the road -- I told Darryl I need to call Carolyn and let her know that I'm on my way. I said I'm going to have to change my plans. He said, Well. I'm going on back to the apartment. So that's where we departed at ... at the phone."

Trial Transcript of Record dated February 15-18, 2000. Tr. page 528 at 14-25. See also App. page 8-10.

Appellant would be forced to first ask the question was this evidence being produced to assert a third party theory or was it being introduced to make a prima facie case of a legitimate alibi defense? Q: "So at that point in time, you -- Ya'll -- you and Darryl had parted company at that point?" A: "Correct ...." Q: "After you left a message for Carolyn, where did you go?" A: "Well, I didn't go to the apartment. I headed down main street...." Id. page 40, ll. 9-19.

This opens the door on the essential element of innocence or guilt, the Test #4. Alibi is merely a defendant saying "I did not do it and I was not there when the crime was done." In State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992) "When a witness testimony is disputed or his credibility called into question, other testimony verifying the facts ... is not merely cumulative." The Test #5. [State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002)

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"This opens the door on the essential element of innocence or guilt, the Test #4. Alibi is merely a defendant saying 'I did not do it and I was not there when the crime was done.' In State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992) "When a witness testimony is disputed or his credibility called into question, other testimony verifying the facts... is not merely cumulative." The Test #5. In State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002) established the principle that cross-examination (under the Confrontation Clause) is frustrated when a defendant facing a subsequent trial is not permitted access to the tran-

established the principle that cross-examination (under the Confrontation Clause) is frustrated when a defendant facing a subsequent trial is not permitted access to the transcript of his previous trial(s) or courtroom access to the Court reporter (with her records of the previous proceedings)].

In the Appellant case herein, his trial counsel made no effect to obtain trial transcript dated, January 31-February 4, 2000, in order to hold witnesses or the Court to their previous statements. More importantly, Appellant's exculpatory story was completely plausible due to the lack of overwhelming evidence presented by the state.

As stated above, Appellant testified in trial record dated February 15-18, 2000. The exclusion of such cross-examination from J.P. Smith and Appellant statement to him and in the subsequent trial, had a prejudicial effect, To illustrate:

1. The jury may not have ignored the probative value of the statement and Appellant testimony;

2. The jury may have been influenced by the reliability of the statement and Appellant testimony;

3. The jury may have consider the accurate account of the facts;

4. Without the critical facts surrounding and people

involved, the jury will arrive at erroneous determination of guilt, and

5. The jury would have properly review the evidence and may have reduce the possibility of convicting a innocent man. The Test #1. "[This] was for the jury to determine or to consider." Lego v. Twomey, 404 U.S. 477, 92 S.Ct 619 (1972).

As Judicial Notice, 201 SCRE, Darryl Cunningham was excluded under third party guilt, therefore, such ruling excluded "such evidence that would raised a reasonable inference or presumption" as to Appellant own innocence "and [its] such proof of connection with it" in the following trial. Gregory, supra.

In* State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991), it was prosecutoral misconduct to allegedly used previously suppressed evidence at trial. When the Appellant took the stand and denied his presence, the State called Darryl Cunningham as a reply witness which revealed that Mr. Cunningham and Appellant left the apartment and left the victim, alive. App. page 41-51; page 42, ll. 20-23; page 47, ll. 10-25. The important part of trial excerpt:

Q: What time did you --- about what time was it that you returned to apartment four? A: About 2:30 [p.m.].

Trial Transcript of Record date February 15-18, 2000 at 19-25.

Q: How did you get in the Apartment, Darryl to get your walkman? A: She let me in.

Id. page 658 at 3-5. The State argued that the "exact time of victims murder was uncertain." This is conjectural. On the contrary, the "new evidence," Daniel Brown clearly show that a "time line" could have been establish but ignored. "Evidence of other crimes or prior bad acts is never admissible unless necessary to establish a material fact or element of the crime charge." State v. Coleman, 389 S.E.2d 659 at 660. Trial Judge erred in allowing alleged Social use of Cocaine, in which, improperly placed Appellant Character into evidence. See App. page 42, ll. 20-23; App. page 47, ll. 10-25. Consequently, when the State called Darryl Cunningham as a reply witness to present social use of narcotics, only demonstrated Appellant's bad character and social irresponsibility. It was prejudicial as a result of that admission for out-weighed any probative value. Furthermore, it was misleading to the material fact or element of the crime charge. Finally, it force the jury to speculate as to the essential element: Did Appellant return to the apartment with Cunningham?

Alibi means "elsewhere". The evidence of alibi must be addressed to the exact time when the offense was committed and the after-discovered evidence - a physical eye witness - establish for the Appellant that impossibility to kill the victim, thereof. See also *State v. Robbins, 275 S.C. 373, 271 S.E.2d 319, 322 (1980); *Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (Alibi witness) "... witness who would have testified that he saw defendant leaving lounge 15

minutes prior to conclusion of rape of victim).

This evidence was crucial because Cunningham's trip back and forth to the apartment was extremely close to the approximate time of the victim's death. Though this could be viewed as pushing the guilt off on Cunningham. Appellant believe in refusing to admit such testimony would not only prevent a alibi defense on Appellant's behalf, but, moreover, the probative value of such testimony out-weighs any prejudice to the state in allowing such testimony.

Rather, it would provided a precise time line of Appellant's whereabout prior to and around the time of the victims death. Thus, the new evidence clarify the essential elements of an alibi and shine light that, it is more likely than not that no reasonable juror would found Appellant guilty beyond reasonable doubt. Furthermore, the constitution error "probably" resulted in the conviction of one who was actually innocent. The failure of the State to:

a. Place the Appellant at the scene;
b. Establish intent;
c. Establish premeditation;
d. Establish opportunity; or
e. Establish motive (as to murder).

This case is very unique, in that, as Appellant previously stated: DNA evidence or Investigator Smith's testimony would be excludable and unconnected under a third party guilt defense. As a genuine issue of a material fact, no

no one employed or "associated with the Columbia City Police Dept" had the "occasion to interview Daryl Cunningham." Nor was the jury ever appraise of this lack of evidence. See App. page 30, ll. 18-24. However, had Darryl Cunningham and Appellant's thorough testimony been permitted to establish a time line of their activities and whereabout leading up to and around the time of the crime, the evidence would be insufficient to allow the case to go to the jury. The Test #2.

It's clear that trial Counsel had the Confrontational right to ask the lead investigator why he did not locate Daryl Cunningham, to see whether he was there and when was the last time he was at the residence. More importantly, did he ever became a suspect or why not. This was a murder investigation. Simultaneously, the state provided a substantial basis for finding probable cause to obtain - order for blood samples from Daryl Cunningham. See App. page 52-55. This evidence should not have been suppressed. Error was not harmless.

Previously, Daryl Cunningham had been suppressed evidence. Despite this fact, the State admitted there was a nexus. "Mr. Alamin rendition of the sequence of events would be substantially corroborated by Mr. Cunningham." See App. page 40, ll. 13-18; App. page 45, ll. 20-25 and App. page 48, ll. 21-23. Lego v. Twomey, supra. Such testimony would have been two (2) strong indicia: (1) that the victim was murdered at least 10 to 15 minutes prior to Appellant's presence on the scene and (2) The State could not produce an alibi for Daryl Cunningham.

In this light, the DNA evidence and Investigator Smith testimony would have proved not only relevant but probatively supported Appellant theory: "that he didnot do it and he was not there when it happen." In fact, it would have shown that — in light of what was known to the officers, a fuller and more adequate investigation should have been done.

The State presented its only key witness, Michael A. Watkins, who gave a sworn statement to Investigator Smith that "[He] came in the parking lot about 3:00 p.m." Trial Transcript of record dated February 15-18, page 147 at B. "Petitioner has satisfied his burden, leaving no substantial doubt that trial counsel failed to even consider offering alibi witnesses for the 9:00 p.m. to 9:30 p.m. time period." Boseman v. Bazzle, F. Supp. 2d 2008 WL 3850703. See also Kyles v. Whitley, 514 U.S. 419, 433, 115 S.Ct. 1555 (1995).

To illustrate the new evidence, see App. page 7, Appellant (A) and Cunningham (B) got off the bus on Colonial Dr. Appellant and Cunningham headed two (2) blocks down Clarendon St. At North Main street and Clarendon street, Appellant and Cunningham separated (at 2:30 p.m.). Cunningham cross North main street to a gas market, then, proceed cross Fairfield road to reach the apartment complex.

Appellant turns right - paralel to North main street to a phone booth at C.J's market. At the phone booth, Appellant encounter a unknown citizen, Daniel Brown

~~In this light, the DNA evidence and~~

(c), after-discovered evidence at that phone booth. There was a brief acknowledgment and greeting to each other presence. After Appellant made his call, Appellant headed down North Main street, while looked on. Such direct evidence "would probably change the result if a new trial was held." The Test #1.

A thorough investigation could have shown guilt or innocence of Appellant. However, Appellant alleged the "new evidence" shows his innocence as the factual predicate of an independent claim. The phone call was a major part of this case. Indeed, the phone call separated the Appellant and his alibi witnesses right before what set the crime in motion and directly shows Appellant did not directly return to his apartment between the time of 2:30 p.m. and 3:00 p.m. Any definition of the word "analyze" would require at least a consideration of calling alibi witnesses to show that Appellant was not at the scene. Relevant to this fact, trial counsel's failure to investigate the Appellant's alibi defense was prejudical and that the circuit court conclusion to the contrary was objectively unreasonable. A new trial should be had to consider this fact, Evidentiary hearing is required. Cf. Boseman v. Bazzle, supra. (Same Counsel).

In summary. The question is who does this omission falls on, counsel or solicitor? or both? We need not address who to cast the blame on, because, whoever we cast the blame on, Appellant was still prejudiced, thereby. Unlike the average case, trial counsel stated: "If

Mr. Alamin take the stand and testify, it becomes relevant." The Court: "It may very well be relevant at that time.... [then] I may be forced to grant a mistrial to the State for the improper introduction of third party evidence." See App. page 22-23. Cf. Kimmelman v. Morrison, 477 U.S. 365, 454, 106 S.Ct. 2575, 2624 (1986).

There is not one isolated prejudicial occurrence, but, rather, a cumulation of them, which stemmed from this one simple omission on behalf of counsel and/or State. The failure to review the discovery and establish this time line deprived Appellant of a alibi defense. As a result:

1. The alibi facts presented in this case was mischaracterize as third party guilt facts;

2. This permitted the State to have critical factual evidence excluded which had the affect of "concealing the evidence of alibi;

3. This in turn forced Applicant to surrender his constitutional right to remain silent in order to assert his Constitutional right [denial of presence] to have witnesses and evidence presented in his favor, and

4. Which also proved very damaging, because, it opened the door for the state to introduce his prior conviction (armed robbery) which harmed his credibility. The Court of Appeals should not have undertaken the Rule 609(b) balancing test itself, but should have remand-

ed the question to the trial court. See State v. Cole, 337 S.C. 622, 629, 525 S.E.2d 246 (2000).

To allow such a conviction to stand and to allow the errors of Counsel or the State to visit upon the head of the Appellant, with such shocking impact, would fully uproot the protections of due process.

The State have failed to establish an exact time line or time of death. The defense was provided prior to trial with a sufficient enough time, estimated, to allow, it to assert a alibi defense. However, the defense failed to provide adequate notice of an alibi defense pursuant to Rule 5(e) SCRCrimP. This argument, while it may shift the blame from the State to the defense, does not lesson the impact of the prejudicial effect that ensued, as a result, of this omission. Thus, Appellant find such an argument to not be of merit, and, moreover, it adds on to the harm of Appellant. Inasmuch as, since no notice of alibi was given, he was barred from presenting an alibi defense when the evidence clearly supported such a defense. Furthermore, since an factual alibi evidence in a case, could so easily be, misconstrued as pointing the guilt in another direction. Appellant can much easily see how the failure of his ability to assert the alibi defense was so easily mischaracterize as "third-party guilt." No matter what angle we view it in, the harm increase and the errors accumulates to no other conclusion but a denial of a fair trial. Evidentiary hearing required.

ARGUMENT

II. Appellate counsel failed to petition the petition the South Carolina Court of Appeals to remanded to the trial Court for an on -the-record Colf balancing test.

In Teague v. Lane, 489 U.S. 288, 109 S.Ct 1060 (1989) Justice Brennan states: 'the plurality's infidelity to the doctrine of stare decisis." That doctrine "demands respect in a society governed by the rule of law." Id. 489 U.S 288, 332; Akron Center for reproductive Health, Inc., 462 U.S. 416, 419-420, 103 S.Ct 2481 (1983) because it enhances the efficiency of judicial decision making, allowing judges to relay on settled law without having to reconsider the wisdom of prior decision in every case they confront, and because it fosters predictability in the law, permitting litigants and potential litigants to act in the Knowledge that precedent will not be treated unfairly as a result of frequent or unanticipated change in the law...."

On Appellant direct appeal, Appellate counsel, amoung other things, raised the following:

> The Court erred when it permitted appellant to be impeached with his prior conviction for armed robbery, without reviewing the predicates for admissibility, such constituting an abuse of discretion.

In case at bar, the Appellant's trial counsel failed to demand that the prosecution announce at trial the precise reason, specific subsection of any rule of evidence, which would justify the introduction at trial. For purpose of impeaching the Appellant's prior conviction for armed robbery. State v. Howard, 376 S.C. 173, 720 S.E.2d 511 (2002); State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

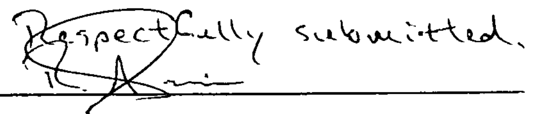
State another way, Appellant's trial counsel was never advised that Appellant's prior conviction was being introduced because the State consided armed robbery a crime of dishonesty. Ner was the Court apprised of this theory. Nor was the jury. Since the Appellant's case pivoted heavily on his credibility, trial counsel was ineffective for failing to require the State and the trial Court to justify it's introduction of this prior conviction, as required by Colf. Tr. 437 at 1-25; Tr. 490 at 20-25 to 491 at 1-24. Violating the provision of the Fifth, Sixth and Fourteenth Amendment.

The South Carolina Court of Appeal's denial was unreasonable and it violates majority of the South Carolina, as well as, federal precedents cases. Moreover, when it concedes that a state court can also apply a new rule, on appeal retroactively in Appellant own case. See also § 2244(d)(1)(C), cf. James B. Distilling Co. v. Georgia, 501 U.S. 529, 111 S.Ct 2439 (1991); Bouie v. City of Columbia, 378 U.S. 347, 354-355, 84 S.Ct. 1694 (1964) (applies also to judicial ruling); cf. Slack v. McDaniel, 529 U.S. 473, 484-485, 120 S.Ct 1060 (1989).

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari must be granted.

Respectfully submitted,



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