

State of South Carolina  
In The Appellate Court

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Appeal From Greenville County  
Honorable Letitia H. Verdin, Judge

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The State, ----- Respondent,

vs.

Nathaniel Glenn, Jr., --- Appellant.

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Brief of Appellant

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Case No: 2013-000919

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Nathaniel Glenn, Jr., #303563

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SC Court of Appeals

# INDEX

Table of Contents	1.
Table of Authorities	2.
Statement of the Issue on Appeal	3.
Statement of the Case	4, 5 and 6.
Argument I	7, 8 and 9
Argument II	9, 10, 11 and 12.
Conclusion	12 and 13.
Certificate of Service	14.

## Table of Authorities

<u>Cases and Statutes</u>	Page
BB & T vs. Taylor, 633 S.E.2d 501 (2006)_____	12.
Berger vs. United States, 295 U.S. 78, 88 (1935)_____	11.
Blandshaw vs. State, 245 S.C. 385, 140 S.E.2d 784 (1965)_____	9.
Butler vs. State, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990)_____	12.
Chewning vs. Ford Mortar Co., 579 S.E.2d 605 (2003)_____	12.
Giglio, 405 U.S. at 154-55, 92 S.Ct. 763_____	8, 11.
Harris vs. U.S. RR Retirement Bd. 198 F.3d 139 (4th Cir. 1999)_____	8.
Johnson vs. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001)_____	12.
McCurg vs. Deaton, 671 S.E.2d 87 (2008)_____	12.
Napue vs. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959)_____	9, 11, 12.
Rogers vs. State, 261 S.C. 289, 199 S.E.2d 761 (1973)_____	9.
S.C. Code Ann (16-9-10)(A)(1)_____	10.
S.C. Code Ann (16-9-30)_____	11.
State vs. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998)_____	9.
State vs. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999)_____	7.
United States vs. Blackburn, 9 F.3d 353, 357 (5th Cir. 1993)_____	12.
United States vs. O'Keefe, 128 F.3d 885, 893 (5th Cir. 1997)_____	12.
Washington vs. State, 478 S.E.2d 833 (S.C. 1996)_____	8.

## Statement of the Issues on Appeal

Whether the lower Court erred in concluding that Appellant is not entitled to have an evidentiary hearing upon his Rule 29(b) motion for after-discovered evidence of false testimony given by the State's witnesses under oath; due to failure to file his appeal of Rule (29) within (10) days after his trial.

Whether the Appellant's Fourteenth Amendment Constitutional Right of Due Process of Law was violated once the lower Court refused to grant his hearing of a non-statutory limitation issue, when there is fraud upon the Court that had enabled the jurors to weigh-out the inconsistencies and falsehoods of the two main witnesses testimony.

## Statement of Case

The Petitioner, Nathaniel Glenn, Jr., is presently confined in the South Carolina Department of Corrections pursuant to Orders of Commitment of the Clerk of Court of Greenville County. The Petitioner was indicted for trafficking cocaine, indictment number 2002-GS-23-6529. It alleges that Glenn did in Greenville County on or about August 2, 2002, traffick cocaine. He was represented by James Goldsmith, Esquire, on July 13, 2004. Glenn proceeded to a jury trial and was found guilty of trafficking cocaine. He was then sentenced to (27) years (85) percent.

A Notice of Appeal was filed on the Petitioners behalf at the South Carolina Court of Appeals. The Petitioner had chosen to withdraw his appeal. The Court issued the Order of Dismissal and Remittitur on June 23, 2005.

Petitioner filed an application for (PCR) on February 20, 2006, (docket no. 2006-CP-23-1230). The State made its Return on or about May 2, 2006. Petitioner filed a subsequent amendment to his application dated June 26, 2006, in which he alleged several instances of ineffective of trial counsel.

After the denial of his (PCR) hearing, the Petitioners attorney filed a motion to alter or amend the judgment which was denied January 18, 2008, by the Honorable G. Edward Welmaker, Judge for the Thirteenth Judicial Circuit.

A Notice of Appeal was filed on January 24, 2008, with the South Carolina Supreme Court. The South Carolina Supreme Court issued its Orders on May 28, 2009. The Remittitur followed on June 15, 2009.

On August 18, 2009 Petitioner filed a writ of Habeas Corpus raising four grounds for relief. On January 13, 2010, the Respondent filed a motion for summary judgment.

By Order filed January 14, 2010, Petitioner was advised of Summary Judgment Dismissal procedure and the possible consequences if he failed to adequately respond to the motion.

Petitioner failed to respond to the Motion and the Court filed an Order on February 24, 2010, giving him another opportunity, through March 22, 2010, to file his response.

On April 5, 2010, the Petitioner moved for an extension of time, which was granted through April 22, 2010. The Petitioner filed his Response in opposition to the motion for summary judgment on April 5, 2010, and submitted additional attachments in support of his response on April 9, 2010, May 14, 2010 and June 8, 2010. May 28, 2010, he filed an affidavit in support of his response and on June 28, 2010.

On July 22, 2010, the Honorable Kevin F. McDonald, United States Magistrate Judge recommended that the Respondents Motion for Summary Judgment be granted. The recommendation was granted and the Appeal to the United States Court of Appeals for the Fourth Circuit, on August 18, 2009. April 26, 2011, his appeal was dismissed by unpublished per curiam opinion and a Certificate of Appealability denied.

On or about the month of May 2011, the Petitioner filed a motion for Rule 29(b) for a New Trial based on after-discovered evidence in the court of General Sessions that was clock-dated stamped copied and filed on May 19, 2011.

July 2011, his family hired Attorney Tommy Thomas to amend further evidence towards his original motion that was filed May 19, 2011.

January 14, 2013, his attorney filed an amended motion to the Clerks Office of Greenville County. March 19, 2013, the State filed a motion to dismiss his amended motion. April 9, 2013, the Honorable Letitia H. Verdin, Judge dismissed the amended motion.

April 22, 2013, his attorney filed a Notice of Motion to Alter or Amend to the Petitioners Original Filed Motion on the date of May 19, 2011. July 13, 2013, Petitioner filed a Pro Se Motion Designation of Matter to the Clerks office of Greenville County and the Court of Appeals.

August 14, 2013, his attorney Tommy Thomas mailed a copy of the denial order from Judge Letitia H. Verdin.

July 10, 2013, the Honorable Letitia H. Verdin denied his motion to Alter or Amend. July 25, 2013, the Order of Denial was filed before the Greenville County Clerks Office.

September 12, 2013, he was notified by attorney Tommy Thomas that his case does not meet the requirements of the Indigent Defense and he has (30) days to complete his Brief to the Appellate Courts. (as here) Petitioner has completed the aforementioned Brief to the best of his ability.

## Argument I

Whether the lower court erred in concluding that Petitioner is not entitled to have an evidentiary hearing upon his Rule 29(b) motion for after-discovered evidence of false testimony given by the States two main witnesses under Oath, due to the failure to file his appeal of Rule 29 within 10 days after his trial.

The Petitioner submits that the clerks file of the confidential informants criminal history record, the informants testimony and the detectives testimony on July 13, 2004, amounts to after-discovered evidence under Rule 29(b) SCR Crim P., became a due process violation under both the State and Federal Constitution under State vs. Spann.

During the course of the Petitioners judicial process he was deprived of due process. He was never found with any drugs, nor money that belonged to the narcotic agency and the only witness who identified him as being the culprit was the informant.

The informant and the detective along with the solicitor misled the court in its entirety into thinking or assuming that the Petitioner was the higher-up dealer of the informant's arrest of cocaine the summer of 2002, as stated amongst the trial transcripts. And that statement of false testimony under oath from the two main witnesses was the fruit of the States offense leading to his arrest and conviction.

The Petitioner has the burden of proving that the grounds raised in his motion for Rule 29(b), SCR Crim P., could not have been raised in any previous appeals, because his case involves "unique" factual circumstances. And the after-discovered evidence of material facts states the opposite language of the witnesses trial testimony, which had a significant impact on the jury's verdict.

The herein allegations present a "unique" combination of facts and unusual circumstances which warrants review. Thus, Petitioner should not be punished for the actions and inactions of his appointed attorney's throughout his judicial process. It is generally preferred that a blameless party not be disadvantaged (as here) by the procedural errors or neglect of his attorney. Harris vs. U.S. RR Retirement Bd.

The Petitioner is alleging after-discovered evidence due to the conduct of State Officials and the informants. That such conduct amounts to fraud upon the Court, denial of a fair trial and false testimony under Oath. See Washington vs. State, and Giglio.

The Petitioner's trial transcripts bears out the allegations before the Court are submitted as exhibits in support thereof. Each numbered page indicated shows where the detective and the informant committed fraud under oath by false testimony. Where The Law Holds: Where the attorney failed to correct the witness false testimony, although she clearly (as here) knew it to be false.

The Supreme Court held that false testimony used by the State in securing the conviction may have had an effect on the

outcome of the trial and accordingly, reversed the defendants conviction. Id. at 272, 79 S.Ct. 1173 Napue vs Illinois. In the instant case, the State attorney failed to correct the false testimony and she repeated the witnesses falsehood during her summation. (as here)

## Argument II

Whether the Petitioners Fourteenth Amendment Constitutional Right of Due Process was violated once the lower courts had refused to grant his evidentiary hearing of a non-statutory limitation issue, when there is fraud upon the court that had enabled the jurors to weigh-out the inconsistencies and falsehoods of the witnesses testimony.

The allegations set forth below presents a Prima Facie Violation of Petitioners Constitutional Rights. Rogers vs State. The allegations in the motion must be accepted as true unless and until successfully refuted. Blandshaw vs State. On the Matter of Sub-Judice, the Petitioner is alleging after-discovered evidence that warrants a New Trial and, or Vacation of his Conviction. To prevail on this claim the Petitioner "must show that the after-discovered evidence: (1) is such that it would probably change the result if a New Trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching. State vs Needs.

The Petitioner's defense was prejudiced by both the detective and informant's trial testimony by the following material of after-discovered evidence:

- (1) detective and informant's testimony on record stated that the informant was arrested for distribution of cocaine the summer of 2002. March 6, 2002, his arrest warrant stated the informant was charged with methamphetamines (exhibit on record);
- (2) detective testified that the informant had pending charges on the date of August 2, 2002, as the video footage was being played before the jurors during trial. May 20, 2002, the informant charges were dismissed. (exhibit on record); and
- (3) informant's crime laboratory report from the result of his arrest on March 6, 2002 stated "No Control Substance Detected" on March 25, 2002. (exhibit on record)

The State's witness, detective Lawson testified that the informant was arrested for cocaine to persuade the jurors that the petitioner was the higher-up dealer of an ongoing conspiracy of the informant's arrest. (trp. 25, 26 and 44).

The material evidence of the witnesses testimony and the Solicitor's summation that were made under oath, prejudiced the Petitioner's defense and violated the following S.C. Code of Laws:

- (1) S.C. Code Ann (16-9-10)(A)(1) "It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any Court of Record, Judicial, administrative, or

regulatory proceeding in this State"; and  
(2) S.C. Code Ann (16-9-30) "It is unlawful for a person to willfully and knowingly swear falsely in taking any Oath required by law that is administered by a person directed or permitted by law to administer such Oath."

The State witnesses misleading testimony had prejudiced the Petitioner's defense, Berger vs. United States, "It is as much [the solicitor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." (as here) The Petitioner's trial transcripts bears out the allegations before the Court as an exhibit in support thereof of fraud being committed under oath.

The Supreme Court held that the false testimony used by the State in securing the conviction may have had an effect on the outcome of the trial, and accordingly, reversed the defendants conviction. Napue vs. Illinois, in the instant case, the solicitor failed to correct the perjury and repeated the witnesses falsehood in his summation. (see trial transcripts). The Supreme Court reversed the defendants conviction because there was reasonable likelihood that the attorneys knowing use of perjury on an issue so relevant to the witness credibility affected the judgment of the jury.  
Giglio.

Thus, the grant of a New Trial based upon Napue, violation is proper only if (as here) (1) the statement in question are shown to be actually false; (2) (as here) the attorney knew that they were false; and (3) (as here) the statements were material. Blackburn vs. United States, and United States vs. O'Keefe.

Wherefore, the Petitioner urges this Court to consider his claim of after-discovered evidence and the following testimony and exhibits upon the record that are being presented that could not be presented prior to trial, sentencing, and his post conviction hearing; of informant Teasley's arrest report and drug analysis findings. See Johnson vs. Catoe, (Waller J., dissenting) (Quoting: Butler vs. State).

### Conclusion

Based upon the following cases and authorities of law, the Petitioner states that upon the delayed disclosures of after-discovered evidence, there was an inability to effectively cross-examine the witnesses testimony.

He also states that the issues of fraud upon his case were timely filed. There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. Chewning vs Ford Motor Co.

Party making a motion for relief from judgment has the burden of presenting evidence proving the facts essential to entitle him to relief. McClurg vs. Deaton.

The movant in a motion for relief from judgment on basis of mistakes, inadvertence, excusable neglect, newly discovered evidence, or fraud has the burden of presenting evidence proving the facts essential to entitle her to relief. BB & T vs. Taylor.

Thus, resulted (as here) the Petitioner was denied a fair and un-ambiguious trial by the solicitor, detective and informant because of fraud upon the Court.

Therefore, the lower courts order denying the Petitioners Motion for New Trial should be Reversed and his hearing be Granted to prove his essential facts that would entitle him to relief.

Respectfully Submitted,  
S. Nathaniel Glenn Jr.  
Nathaniel Glenn, Jr., Petitioner  
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State of South Carolina  
In The Appellate Court

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Honorable Letitia H. Verdin, Judge

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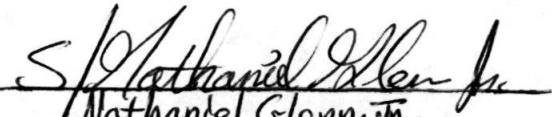
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Certificate of Service

The undersigned hereby certifies that a true copy of his Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Asst. Atty. General at P.O. Box 11549, Columbia, S.C. 29211 and the Honorable V. Claire Allen, Clerk of Court of Appeals of S.C. by depositing it in the U.S. Mail, postage prepaid on the date of September 3, 2014.

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

Case No: 2013-000919

Dear Clerks Office:

May I please be forwarded  
a clock-dated stamped copy of the  
following enclosures, along with my  
Record on Appeal for my personal files  
please. Thank You.

*Nathaniel G. [Signature]*

Sept. 3, 2014

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