State of South Carolina
In The Court of Appeals

Appeal From York County
Court of General Sessions
John C. Hayes, III, Circuit Court Judge

Appellate Case No.: 2013-000775

State of South Carolina,

Respondent,

v.

Antonio Gordon,

Appellant.

Second Amendment to Appellant's Pro se initial Brief

Antonio Gordon #259798
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the Appellant hereby move in this Honorable Court acting Pro se to amend his initial brief Argument (The lower court erroneously denied the motion on the merits).

The lower court found that the appellant's motion for a new trial should be denied because his witnesses were not credible and because all three witnesses were "fabricating testimony" in a concerted effort to give the appellant a new trial. Order at 23. The Appellant asserts that this finding is erroneous for a number of reasons. First, the appellant asserts that the confession of a co-conspirator that he was the shooter would "create reasonable doubt" such that a new trial is warranted. State v. Meeker, 331 S.C. at 170, 672 S.E.2d at 567. See State v. Tripp, 150 S.E. 888 (Holding new trial should be granted if affidavits would lead any reasonable mind to inference that the newly-discovered evidence probably would change the result).

The Appellant was sixteen years of age with an I.Q. of 68 borderline function range of mild mental retardation and made a confession. The Appellant's mother retained attorney Christopher Welborn to represent the appellant and the attorney were at the Police department demanding that Questioning cease of his child client and that he have access to him the Appellant. The Police refused stating, Appellant had not requested an attorney.

The Appellant challenged his confession prior to his guilty plea on the ground that it was not Knowingly, or intelligently made inasmuch he was easily manipulated into making the statement and that he could not have understood his Miranda rights due to his mental deficiencies. See FN1 The Appellant could have presented the evidence that he was easily suggestible, was easily led into saying things that weren't true, and that he could not have understood his Miranda rights.

However, under Miranda and Jackson v. Denno case law the Jury has to find that the statement was right beyond a reasonable doubt freely and voluntarily given before they could consider it. There was substantial arguments Presented against the confession during the Pretrial hearing in this case so the Appellant asserts that a Jury would not absolutely one hundred Percent believe his statement was freely, voluntarily and knowingly made especially if applying the Fare v. Michael C., Supra, totality of the Circumstances approach and Marta Gordon was going to testify he was the Shooter, and McCreary testifying Marta Gordon existed their vehicle with the gun and got back in the vehicle with the gun in conjunction with DNA identifying Marta Gordon to the Shooter. See Attachment (E) (3) and Exhibit (8)

FN1 The trial court did not apply Fare v. Michael C., 442 U.S. 707, 99 S.Ct 2560 (1979) Totality-of-the-Circumstances approach when ruling Appellant's Juvenile Confession were admissible under Miranda and Jackson v. Denno case Law.

Therefore, due to Appellant's mental deficiencies where appellant could have Presented evidence that he was easily manipulated into making the confession and easily suggestible, was easily led into saying things that weren't true, in conjunction with Diaz identifying Monta Gordon as the Shooter - with Monta Gordon testifying that he was the shooter, McCreary testifying that Monta Gordon existed their vehicle and reentered their vehicle with the gun, coupled with Problems with the States only Physical evidence (Palm Print), there is essentially a chance a Jury will find that Appellant's Confession was not freely, voluntarily, intelligently and knowingly made and Probably find beyond a reasonable doubt that Monta Gordon was the Shooter and not the Appellant, which would change the result. See Fn[1] State v. Mercer, Supra; State v. Spann, 334 S.C. at 614, 513 S.E.2d at 99.

To deny appellant a trial in the face of a confession by a co-conspirator who testified he acted alone and that Appellant did not have anything to do with it would constitute a "denial of fundamental fairness shocking to the universal sense of justice." Butler v. State, 302 S.C. 466, 468, 397 S.E.2d 89, 88 (1980). Accordingly, the appellant asserts that this Portion of the lower court's ruling is erroneous and should be reversed.

this 10th day of October, 2014

Antonio Gordon

FN[1] - The State relying on a (Palm Print) to Place Appellant as the Shooter. Appellant assert he raised the Palm Print issue as ineffective assistance of Counsel in his initial review collateral Proceeding. (PCR) Counsel waived the issue without Appellant's Consent and guilty Plea Counsel testified there was Problems with the Palm Print evidence and did not tell Appellant because Appellant's Co-defendant's were going to testify against him.

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Antonio Gordon,

Appellant.

Certificate of Service

The Appellant hereby certifies that he have served opposing counsel at the address listed below with Appellant's second amendment to his Pro se initial brief. This 10th day of October 2014.

Donald J. Zelenka
Office of Attorney General
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Antonio Gordon

Dear clerk:

Please find a Amendment brief on my Initial/ pro se brief.

Thanks

Curtis Gordon #254798
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RECEIVED
OCT 10 2014
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LEGAL MAIL

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OCT 15 2014
SC Court of Appeals

South Carolina Court of Appeals
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