

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Diane Scafer Goodstein, Circuit Court Judge

Adrian Darby,

Petitioner,

v.

State of South Carolina,

Respondent

APPELLATE CASE NO. 2014-000711

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI

OTHER COUNSEL OF RECORD:

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PRO SE PETITIONER

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ISSUE PRESENTED

- Ground A. Did Solicitor committed a "Procedural Error" by unlawfully impaneling its Grand Jury outside of the Statute (14-5-620 Sec. (3))?
- Ground B. Fruit of an Arrest without probable cause?
- Ground C. Fraud upon the Court and Perjury?
- Ground D. Brady violation?

STATEMENT

On May 12, 2010, Petitioner Adrian Darby was indicted by the Orangeburg County Grand Jury for Burglary in the first degree and Assault and Battery of a High Aggravated Nature. App. 375-380. On August 10-11, 2010, Petitioner proceeded to trial before the Honorable R. Ferrell Cochran, Jr. and a jury. App. 1-274.

Petitioner was represented by Everett K. Chandler and the State was represented by Assistant Solicitor Donald Sorenson. App. 1. The jury convicted the Petitioner as indicted. App. 256, 11. 1-17. Judge Cochran sentenced Petitioner to fifteen years imprisonment for Burglary in the First Degree and five years for Assault and Battery of a High and Aggravated Nature, with sentences to be served concurrently. App. 269, 11. 16-25. On August 5, 2011, an Order of Dismissal was issued from the South Carolina Court of Appeals following Petitioner's notification of his desire to withdraw his appeal. App. 276.

On May 30, 2012, Petitioner filed an application for Post-Conviction Relief. App. 278-287. Respondent filed a Return to Petitioner filed an application on November 28, 2012. App. 288-292. On October 31, 2013, an evidentiary hearing was held before the Honorable Diane S. Goodstein. App. 293-358. Petitioner was represented by Glenn Walters, Sr., and Respondent was represented by Assistant Attorney General Megan E. Harrigan. Id. By an order filed on February 23, 2014, Judge Goodstein denied Petitioner's PCR application. App. 359-374. Petitioner filed a timely notice of appeal. This petition for Writ of Certiorari follows.

ARGUMENT

GROUND A. Did Solicitor committed a "Procedural Error" by Unlawfully impaneling its Grand Jury outside of the Section (14-5-620 Sec.(3))?

Supporting Facts and Argument

The Petitioner humbly contends that the Solicitor did committed a "Procedural Error" and "Concept of the Proceedings" unlawfully impaneling its Grand Jury outside the Statute [14-5-620 Sec.(3).] Here, the General Assembly did not made a provision in S.C.Code Ann.§14-5-620 Sec.(3) for a "term of Court" on the Second Monday in "May".

The South Carolina Statutory Law provides the following "term of Court":

- 14-5-620 Sec.(3): Orangeburg County.- The Court of General Sessions for the County of Orangeburg shall be held at Orangeburg the Second Monday in January, the first Monday in May and the Second Monday in September, term shall be for three weeks for the May Sessions.

On the one hand, the General Assembly did not made a provision in the Statute (14-5-620 Sec.(3)) for A "term of Court" on the Second Monday in "May". The words of the Statute, must be given their plain and ordinary meaning without resorting to subtle or forced construction. (Observing that where the language of the Statute (14-5-620 Sec.(3)) is clear and explicit, the Court cannot rewrite the Statute and inject matters into it, that are not in the legislature's language.) Under the plain meaning rule it is not the Court's place to change the meaning of a clear and unambiguous statute. Duncan v. Walker, 533 U.S. 167, 121 S.Ct. 2120, when interpreting Statute, Court's task is to construe what General Assembly has enacted, and Court begins with statutory language. When interpreting statute, it is Court's duty to give effect, if possible-

to every clause and word. Court is reluctant to treat statutory terms as surplusage in any setting, and is especially unwilling to do so when term occupies pivotal place in statutory scheme.

Here the facts and evidence will establish that these changes were not foreseeable that the Solicitor's would unlawfully impaneled its [Grand Jury] outside the jurisdiction of the Court of General Sessions, and the willfully printed and published false and misleading information in its indictment in order to deep secret its violation of Statutory Law. Citing the indictment that set forth on App.376:

- ° At a Court of General Sessions, convened on May 12, 2010 the Grand Juror Orangeburg County present upon their Oath:

On the other hand, S.C.Code Ann. § Sec. 17-7-730 and 17-13-150 require that the prosecution fulfil and see that all duties, requirements and Rule of Criminal Procedure related to Due Process and the South Carolina Constitution are adhere to any completed within the Court.

In order to understand the meaning of any statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context; Robinson v. Shell Oil Company, 117 S.Ct. 843, 846 (1997). Article 12 Section 2 utilizes the words, "shall Provide". In this context, "shall" is mandatory. See United states v. Meyers, 106 F.3d 936, 941 (CA 10 1997). In order to understand the meaning of any word, phrase or sentence "the words should be given their plain and ordinary meaning unless something in the text requires a different meaning and or interpretation."

Article 1 Section 23 of the South Carolina Constitution dictates: "the provisions of the Constitution shall be taken, deemed and construed to be mandatory and or prohibitory and not merely directory, except where made directory on promissory by its own term". Article 12 Section 2 of the South Carolina Constitution is clear and unambiguous, "shall" is mandatory Stace v. Carson, 317 S.C. 430, 431, 454 S.E.2d 888, 889 (1995).

The landmark case in Ex Parte Lilly, 7 S.C. 1876 WL 5977 July 1, 1876 the South Carolina Supreme Court held in Lilly, that the legislative has set forth the statute for the [term of the Circuit Court for each County.] In Lilly the South Carolina Supreme Court mandated a procedure for a [term of Court] in the Court of General Sessions. Also, the South Carolina Supreme Rule in State v. Henderson, 134 S.E. 364, 136 S.C. (Aug. 16, 1926). Accordingly, Section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a billed indictment can take place.

Citing State v. Gessette, 117 S.C. 76, 108 S.E. 210 (S.C. 1921), the power to call a special term of the Court of Common Pleas and General Sessions conferred to the Chief Justice of the Supreme Court or the Presiding Associate by Code Civ. Code 1912, § 380 (see Code 1942, § 447), is sustainable under the provision of Const. Art. 5 § 6, directing the General Assembly to provide by law for the temporary appointment of any person learned in the law to hold either special or regular terms of the Circuit Courts.

One additional piece of evidence very clearly settles the matter of state's FALSE condition. The information contained, else establishes that NO special term of the Court of General Sessions was convened on First Monday in May under the provisions of either Section 14-5-410, Section 14-5-910, or Section 14-5-920.

In this case, there was NO [Special term of Counsel] granted by the Chief Justice to change the [term of Court] to Second Monday in May.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an unlawful mode of procedure not allowed under Section 14-9-210, state lacked the requisite jurisdiction to complete return of unrecruited billed indictment.

The Petitioner invoke Subject Matter Jurisdiction, that can be raised at any time. Here, the Solicitor and Law Enforcement Officers willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the Petitioner's offense of conviction and any relevant conduct by the Petitioner.

ARGUMENT

GROUND B. Fruit of an Arrest without probable cause?

SUPPORTING FACTS AND ARGUMENT

The Petitioner contends it is well established there was no [Probable Cause] since Mr. Darby burglarize the [victim] on Sept. 29, 2009. Generally, an arrest must be supported by probable cause to believe that a crime has been committed and that the person to be arrested committed the crime. See Tennessee v. Garner, 431 U.S. 1, 7 (1985). The standard for an arrest is probable cause, defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense. See Gorstein v. Pugh, 420 U.S. 103, 111 (1975).

During the trial of August 10, 2010, the testimony of Shaninah M. Brown testified as follows on App. 131.3-5:

Q. Okay. Do you remember. Do you know who answered the Door?

A. Jehnathan and my Daddy.

As set forth, the cross-examination by Mr. Chandler on App. 136.4-5:

Q. So, who opened up the door?

A. My Daddy and — No, Jehnathan dad.

Q. Did they let him in?

A. Yes.

Additionally, the minor daughter testified that Petitioner was let in by her father. App.136.11.10-13. Boche Due Process and common sense dictate that the State witness has establish beyond a reasonable doubt that Mr.Darby did not burglarize the victims home on September 29,2010.

However, here, evidence will establish that the testimony of Shaninah M.Brown, would have exonerated Mr.Darby of [First Degree Burglary]. The State witness testify truthfully to the facts that the Petitioner was given consent to enter the dwelling, it was on her personal knowledge. A witness must have personal knowledge of the matter to which he or she will testify. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); State v. Williams, 321 S.C. 455,469 S.E. 49 (1996); Wilson v. Clary, 212 S.C. 250, 47 S.E.2d 619 (1948). Further, so defined: [Entering a dwelling without consent and with intent to commit a crime therein or entering a building without consent and with intent to commit a crime therein and with the concurrence of any one of the three aggravating factors listed for [First Degree Burglary]. As set forth, Mr.Darby was given consent to enter the victims home.

Citing U.S. v. Macfield, 365 F.3d 332, consent to be a red herring; it is the principal issue in the case. Macfield, in his dwellng and free from any coercion or duress, heard a knock at the door and unequivocally stated "[c]he door is open; come on in. "By his statement, Macfield gave consent to enter... Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407 U.S. Cal. 1963. Thus, evidence justified finding that there had been neither reasonable grounds nor probable cause for [Arrest] of Mr.Darby for [First Degree Burglary], which analyzed in Macfield very similar to the one involved here.

The United States Supreme Court has defined probable cause as follows:

- Probable cause exists where the facts and circumstances within the knowledge of the arresting officers and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in believing that an offense has been committed or is being committed (in case of arrest warrants) or that property could be found in a particular place or on a particular person (in case of search warrant). Carroll v. United States, 267 U.S. 132 (1925).

More recently, the Court has defined probable cause in terms of a "fair probability." Illinois v. Gates, 462 U.S. 213 (1963). In the present case, there was no probable cause that Mr. Darby, burglarize the victims home.

In such a situation the relevance of this, subsidiary facts in this case are the same and the sole significance of the Petitioner's evidence and/or testimony concerning the "so-called" "affirmative defense" is to create a reasonable doubt on the existence of an element of the offense, by a preponderance of evidence to counteract an unconstitutional presumption. As set forth, the first approach is to ask whether under all the circumstances the punishment in question is "of such character... as to shock general conscience or to be intolerable to fundamental fairness." Here, a Solicitor must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any Constitutional Rights or privileges. Therefore, a Solicitor has special responsibilities to do justice and is held to the highest standards of professional ethics. Appellate Court Rule 407, Rule Prof. Conduct, Rule 3.8.

This legal framework and foundation being firmly in place, the Court is compelled to look at the facts in regard to this case sub-justice because the law arises from facts (Ex Facto Oritur Jus). The Indictment(s) by their Constitutional structural error, language and/or charge mislead the Jury and we can add the Petitioner, to believe that the presumption was not limited to requiring the Petitioner to satisfy the burden of production when the burden of production is to be consistently bore by this State. A presumption although not conclusive that has the effect of shifting the burden of persuasion to the Defendant would suffer the same similar infirmities" Mullaney v. Wilbur, 421 U.S. -

684,95 S.Ct. 1881,44 L.Ed.2d 508 (1975), even if it is embodied within the charge of an indictment.

GROUND C. FRAUD UPON THE COURT AND PERJURY?

SUPPORTING FACTS AND ARGUMENT

The Petitioner contends it is well established by the Record before this Court, that the State committed [fraud on the Court] in their indictment that set forth in App.376. The Assistant Solicitor alleges in body of the indictment:

- o That in Orangeburg County, South Carolina, on or about September 29, 2009, the Defendant, Adrian Jermaine Darby, did willfully and unlawfully enter the dwelling of Denise & Liffney Moorner, without consent and with the intent to commit a crime therein and while in the dwelling, the defendant or another participant was armed with a deadly weapon and/or caused physical injury to a non-participant in the crime and/or uses or threatens the use of a dangerous instrument. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

It is perspicuous by the testimony of the witness Shaninah, that the first written statement and the recorded statement are the same in content [App.136.Ins. 1-12] and [131.Ins.3-5].

According to the testimony of Shaninah M. Brown, will prove beyond a reasonable doubt that the victim given Mr. Darby consent to enter onto his home on September 29, 2009.

This legal framework and foundation being firmly in place, the Court is compelled to look at the facts in regard to this case sub-justice because the law arises from facts (Ex Facto Oritur Jus). The State committed "fraud on the court" when they allege the Petitioner enter the victim home without consent in order to manipulate to believe that the Petitioner burglarize the victim home on September 29, 2009. However, the minor daughter testified that Petitioner was let in by her father. App.136, 11.10-11. Additionally, the Assistant Solicitor alleges on the face of indictment that the Petition was indicted on May 10, 2010. App.375. In addition, the indictment alleges that Grand Jurors convened on May 12, 2010. App.376. As set forth, The Assistant Solicitor acted with intent to deceive or defraud court by means of deliberately planned and carefully executed scheme and fraud has been perpetrated upon the court by Assistant Solicitor in their indictment and Court Record.

other, deliberate plot to frame Mr. Darby. Invoke its Subject Matter
Judiciary powers to adjudicate the Petitioner's Certiorari and viol-
ated his Due Process Rights. Therefore, the sentence and conviction
must be vacated.

It is perspicuous by the testimony of the witness Cruz Moorer,
that the first written statement and the second recorded statement are
the same in content App.101,11.4-13 they further denied that Petitioner
had been let into the residence. According to the testimony of Shaninah
M. Brown, the minor daughter testified the Petitioner had been let into
the residence.

Additionally, victim and other plotted to have the Petitioner Robbed.
App.90,11.18-App.91,11.8. [Ms. Raysor] was never called to testify on Ms.
Moorer's prior inconsistent statement claiming to have arranged Petic-
tioner's being robbed. App.347,11.14-App.348,11.14.

Moreover, the victim and his wife have a prior criminal record and both
manipulate the Court to believe that the Petitioner **Burglarize** the victim
home on September 29, 2009. As set forth, Mr. Moorer, testify that he purchased
marijuana from the Petitioner. App.95.11,9-17. Therefore, there was no [Expi-
anatory Evidence] to prove beyond doubt that the Petitioner sold the victim
[Moorer] any drugs or marijuana. The testimony by the victim is Hearsay. The
victim statement prejudice the defense of Mr. Darby. On App.217,19-20:

Mr. Chandler: Objection, Your Honor, that's not in evidence.

Defendant's objection to improper character evidence was preserved for review
where the objected. See **State v. Burroughs**, 336 S.C. 489, 492 S.E.2d 408 (Ct.
App. 1997), found an objection to a witness's improper bolstering testimony
was properly preserved. After objecting to testimony of the victim and wife
and others concerning the testimony.

GROUND D.

BRADY VIOLATION

SUPPORTING FACTS AND ARGUMENT

The Petitioner humbly quotes that which is state in the United States v. Agurs, 427 U.S. 97 (1976), Respondent offered no evidence. The Solicitor presented no physical evidence to substantiate or proven beyond a reasonable doubt that Mr. Darby [burglarize] the victims home on September 29, 2009. Here, the Solicitor blind side the defense counsel with the victim and his wife Tiffany Moorer [prior criminal] record that would have further evidenced his violent character; that the Solicitor had failed to disclose this information to the defense; and there was misconduct by the Solicitor in this case. It held, however, that the evidence was material, and that its nondisclosure of Quinon Green, to testify on behalf Mr. Darby required a new trial because the jury might have returned a different verdict if the evidence had been received.

In the present case, the problem arises in two principal context. First, in advance of trial and perhaps during the course of a trial as well, the Solicitor must decide what if anything, he should voluntarily submit to defense counsel." Second, after trial a judge may be required to decide whether a non-disclosure deprived the Petitioner of his Right to Due Process. Logically, the same standard must apply at both times. During Direct-Cruz Moorer by Sol. Sor-enson on App. 102.17-20:

- Q. Okay. Let me ask you this, going back to these pictures here, state's exhibit number one, the damage to the coffee table...
- A. That happened when me and Quinon had fight.

App. 106.17-21:

In the present case, during recross, defense counsel asked Mr. Moorer did he could the investigate that Quinon Green did the shooting:

- Q. When they came to investigate the shooting at your home, you told that that Quinon Green did all the shooting, is that fair, is that what you told them?
- A. I said Quinon shot, I did say that.

The alleged testimony of Mr. Moorer (victim) exonerating [Mr. Darby] and the alleged testimony implicating [Quinton Green] as well as the Solicitor's failure to question (Quinton Green) about his participation in the alleged crime. This information could have provided a basis for a defense argument that Mr. Moorer (victim) desire to exonerate his wife motivated him to falsely implicate [Mr. Darby] in return for the State's promise to refrain from asking about his wife's participation in the crime. These scenarios are so closely tied together that this Court should consider on remand the combined effects of the State's failure to disclose both alleged scenarios on [Mr. Darby] trial.

Furthermore, the testimony of [Quinton Green] would exonerate Mr. Darby and the Prosecutor has made a substantial showing of the denial of a Constitutional Right on his claim that the state violated the rule under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), by failing to disclose Quinton Green, so testified that Mr. Darby did not burglarize or assault the victim or his family. The testimony of Quinton Green would have been helpful to the defense. In cases in which "the undisclosed evidence demonstrates that the Solicitor's case includes perjury testimony and that the Solicitor knew, or should have known, of the perjury," the judgment of conviction must be set aside, "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." And the withholding of evidence contradicting testimony offered by witness called by the Solicitor, "involve[s] a corruption of the truth-seeking function of the trial process." But surely the truth-seeking process is corrupted by the withholding of evidence favorable to the defense, regardless of whether the evidence is directly contradictory to evidence offered by the Solicitor. An example offered by Mr. Justice Fortas serves to illustrate the point. "[L]et us assume that the State possesses information that blood was found on the victim, and that this blood is of a type which does not match that of the accused or of the victim."

Let us assure that no related testimony was offered by the State."

Giles v. Maryland, 366 U.S. 66, 100 (1967) (concurring in judgment). The suppression of the information unquestionably corrupts the truth-seeking process, and the burden on the defendant in establishing his entitlement to a new trial ought be no different from the burden he would face if related testimony had been elicited by the Solicitor.

Citing U.S. v. Kelly, 35 F.3d 929 (4th Cir.1994), that the Solicitor committed Brady violation, requiring reversal for denial of due process, by failing to produce the witness [Quinson Green] to corroborate the testimony of Mr. Moorer. This case, however, does involve deliberate prosecutorial misconduct. The Duty of the Solicitor to Disclose Exculpatory Evidence.


Moreover, the Solicitor withheld the victim and his wife prior criminal.
~~(Since the Solicitor opened the door to this evidence, the State cannot complain~~
~~this issue were not preserved this issue for Appellate review by raising the issue~~
~~in the Certiorari these issue is a part of the record and was preserve the quest-~~
~~ion for review and the Petitioner invoke subject matter jurisdiction. As set forth,~~
~~matter of subject matter jurisdiction may be raised at any time.)~~ Ashcroft v. Iqbal,
556 U.S. 662, 129 S.Ct. 1937, ~~subject matter jurisdiction cannot be foreclosed~~
~~or waived and should be considered when fairly in doubt.~~

In the present case, the defense counsel did not had adequate time to prepare a defense for his client because the State usher the Petitioner in Court within [three month]. Without an Order of Continuance being issued the parties were prohibited from continuing the cause. Such deprived the Criminal Court of Subject Matter Jurisdiction and/or Right to enact and/or invoke its Subject Matter Judiciary powers to adjudicate the Petitioner's trial and violated his Due Process Rights. Therefore, the sentence and conviction must be vacated.

CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant Adrain Darby's Supplemental Petition for Writ of Certiorari to vacate the conviction and sentence as matter of law.

This the 27th day of January, 2015



Adrain Darby, #342254
Allendale C.I.
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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Adrain Darby

Petitioner,

v.

State of South Carolina,

Respondent

APPELLATE CASE NO. 2014-000711

CERTIFICATE OF SERVICE

I, certify that a true copy of the Supplemental Petition for Writ of Certiorari and a copy of the Supplemental in the this case have been served on Megan Harrigan, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and John H. Scow, Appellate Defender, Attorney for Petitioner P.O.Box 11589, Columbia, SC 29211-1589 this _____ day of January, 2015.


Adrain Darby, #342274

SWORN TO BEFORE ME THIS

DAY 7th of JANUARY, 2015


(L.S.)
Notary Public of South Carolina

My Commission Expires: Feb 17, 2021

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S.C. SUPREME COURT

January 18, 2015

Adrian Derby, #342254
Allendale, C.T.
P.O. Box 1151
Fayette, SC 29827

The Honorable Daniel F. Shevouse, Clerk
Clerk of Court of Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

RE: ADRIAN DERBY v. STATE OF SOUTH CAROLINA
Case No.: 2014-000711

Dear Mr. Shevouse:

Enclosed please find the original Supplemental Petition for writ of certiorari in the above-captioned matter. We would appreciate it if you would file the original and return the clocked-in copy to us.

By copy of this letter to opposing counsel, we are hereby serving him with a copy of this document.

Thank you for your assistance.

Sincerely,

Adrian Derby #342254
Adrian Derby #342254

cc: Mason Harrison, Esq. Attorney for Respondent
John H. Strawn, Attorney for Petitioner

Ryan B. Smith
January 17, 2021
Feb. 17, 2021

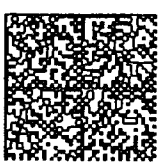
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