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March 9th, 2014

Honorable Chief Clerk Of Court
South Carolina State Supreme Court
Post Office Box
Columbia, South Carolina 29202

RE: Deas v. State, #2014-001761
Subject: Filing Pro Se Brief w/ stamped filed copy return

Hon. Chief Clerk

Please find enclosed original brief, and ask that it be filed and a stamped filed copy be returned for my records. By way of this letter Attorney General is being served a copy of this brief.

With kind Regards;
/s/ Richard Deas
Richard Deas / Pro Se

cc: File
Asst Atty Gen
Encl.

The State Of South Carolina

In State Supreme Court

Charleston County Courthouse

R. Markley Dennis, Jr. Presiding

Richard Deas,

Petitioner,

v.

The State Of South Carolina,

Respondent.

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MAR 16 2015

S.C. Supreme Court

Appellant Case No. 2014-001761

Pro Se Petition For Writ Of Certiorari

Richard Deas #332943
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29010

Questions Presented

Whether Trial Counsel Was Ineffective For Failing To Move For A Mistrial When Juror Informed Court He Was Related To Victim And Witness?

Whether Trial Counsel Was Ineffective For Waiving Right To Confrontation When Counsel Agreed Not To Call DNA Expert?

Whether Trial Court Was Ineffective When Counsel Failed To Exclude The Witness Mr. Young Statement?

Question One:

Whether Trial Counsel Was Ineffective For Failing To Move For A Mistrial After Juror Admitted knowing Victim And Witness?

The Per court ruled, that counsel was not ineffective for failing to move for a mistrial. (App. Pg 878-879) Strickland v. Washington, 466 U.S. 668 (1984) This ruling by lower court, is an unreasonable application of McDonough Power Equipment, Inc v. Greenwood, 464 U.S. 548 (1984); McCoy v. State, 737 S.E.2d 623 (2013); FitzGerald v. Greene, 150 F.3d 357 (4th Cir. 1998) The Greenwood court adopted a two Part standard, that trial counsel, trial court and Per court failed to employ when evaluating this issue where court held:

> (1) A Juror failed to answer honestly a material question on voir dire; (2) That a correct response would have Provided a valid basis for a challenge for cause.
> Greenwood, id at 556; FitzGerald, id at 362

As such, the facts are undisputed that after three (3) days of trial Juror then told court he was related to victim as well as state witness Ms. Shoreka Miles as inquiry went as follows:

> A: Juror: The victim and Leroy and Shoreka are real close family. I don't think I can be Partial.
> The Court: Did You know that during the time when the court was making the inquiry?
> A: Juror: No

Therefore, I will address this Juror answer under two separate test

employed by this court.

Intentional/Unintentional:

Our state court in State v. Woods, 550 S.E.2d 282 (2001); State v. Kelly, 502 S.E.2d 99 (1998) outlined what would constitute as intentional or unintentional falsely responding, in doing so the court must review the question asked and whether it clearly could be understood or misunderstood. Accordingly, court asked:

> The Court: Is there any member of the Panel related by blood or marriage to Richard Vernon Deas or is formerly associated with Leroy Simon, II. or with anyone with whom he is related to. if so Please stand at this time.
>
> App. Pg 11; lines 20-24

> The Court: Does any member of the Panel have a close or Personal or Social relationship with Richard V. Deas or formally with Leroy Simon II, or anyone in his -- with anyone with whom he is related to if so Please stand at this time.
>
> App. Pg 11; lines 25; Pg 12; lines 1-4

This question was asked two times by trial court, at which only one Juror stood and acknowledged she knew my mother and went to school with her and that me and my brother went to school with her daughter. (App. Pg 12; lines 7-15) Contrary to counsel testimony it was no basis for doing so, is not supported by trial record (App. Pg 839; lines 23-25; Pg 840; lines 1 thru 2) and once counsel after third day of trial had a Juror who no doubt saw victim father in courtroom could not know

or did not know this trial was about his own family i.e. Nephew or in such instance the family did not talk or attend funneral of victim. Counsel had an obligation to me, too make sure of this by questioning Jurors individually which court ruled that:

> The Court: I will follow the appropiate Procedure as I indicated, after lunch. I'll make inquiry of the Jury whether it has been discussed with him. Then I will follow the appropiate Procedure and inquiree of each Juror.
>
> App. Pg 290; lines 16-20

Hence, under Smith v. Phillips, 455 U.S. 209 (1982); Greene, id at 363 where court ruled that:

> The remedy for Jury Partiality is a hearing in which the defendant has opportunity to Prove actual bias."
>
> Phillips, id at 215

This Procedure was not followed, and it is clear counsel made no attempts to have court hold hearing in order to determine if Jury was tainted by Mr. Jackson Presence on Jury, or in alternative how he now comes to the realization he knows these People know and not on day one of trial. As the Per court ruled that:

> I agree with You that there is no evidence that he intentionally did it. But there is no inquiry as to why he didn't disclose it.
>
> App. Pg 864; lines 1-5; Pg 863; lines 24-25

Thus, it is at this Point trial court, trial counsel fell short and did not follow Principles laid out in Phillips for me to Prove intentional/unin-

tentional impartiality of this Juror. While it is true I lack Proof for my Juror impartiality issue, it was counsel inadequate Performance which as direct consequence failed to develop this record.

Actual/Implied Bias

I have spoken about intentional/unintentional false answer, and will now address actual or implied bias of Juror 137 during trial. On basis of Mr. Jackson revealing, he was related to victim and Shoreka Miles witness for state. See. Person v. Miller, 854 F.2d 656, 664 (4th Cir. 1988) Smith, id at 222 Greene, id. at 365; The Person. Smith. Greene courts hold that:

> "A revelation that the Juror is an actual employee of the Prosecuting agency, that the Juror is a close relative of one of the Participants in the trial or the criminal transaction, or that the Juror was a witness or somehow involved in the criminal transaction."
>
> Person, id at 664

However, it must be noted that my case Presents a novel chain of events. As it is undisputed my trial Juror lasted three (3) days, before he told the court he was related to victim and both state witnesses. Under the Smith doctrine, the trial was required and counsel should have moved for a mistrial. Contrary to the Per court analysis (App. Pg 863; lines 24-25; Pg 864; lines 1-5) the trial record is not fully developed to determine how or who he associated with during trial, and even though Juror Person was instructed not to speak about incident. No doubt it sparked interest or was buzz of Jury room. In short this dismissal caused alot more

Problems than it solved. Unlike United States v. Seeright, 978 F.2d 849, 849-50 (4th Cir. 1992) where Juror was dismissed after Judge Question Jury to determine if Juror investigation tainted their views; or United States v. Malloy, 758 F.2d 979, 982-83 (4th Cir. 1985) Juror served on co-defendants trial. Both Seeright and Malloy question Jurors individually, to determine what if any Prejudice this Jurors actions or Presence had on Jury. My case, no such action was taken by trial court and it must be noted that there is likewise no dispute that as Per court ruled that:

> As You Pointed out Mr. Davis, it was an id case, there were questions in both eyewitnesses, they equivocated.
>
> App. Pg 860; lines 16-19

The State does not dispute case was weak, therefore Mr. Jackson actual bias views could have infected other Jurors and his intentionally withholding information, Prejudice my right to a fair and impartial Jury is both actual and implied. His removal mid-trial was within courts duty to do so, it was also within counsel duty to ensure me a fair trial with Jurors who are not related to victims or witnesses of case. For this reason, I rely on Smith for Proposition that a hearing in my case was inadequate because it is unclear as to when he became aware of this and who or what finally made him realize he was related to these People. We are not speaking about one day of trial, but three days where he had time to see victim father and others in family and hear victim name repeated. Surely, State can not think

that excusing mid-trial no Prejudice is actual or implied (App. Pg 858; lines 13-15) and fact he concealed this is not to be belittled by state on basis of such a weak case where only identification could and did convict me.

Question Two:

Whether Trial Counsel Was Ineffective for Waiving My Right To Confrontation When Counsel Agreed Not To Call DNA Expert?

The Per curiam ruled, counsel was not ineffective for not calling the DNA expert but stipulated and allowed investigator to do so. (App. Pg 407-411) Counsel actions violated my right to confrontation under state/federal constitution. when counsel allowed this witness to do so it violated Melendez-Diaz v. Massachusetts, 129 S. Ct 2527 (2009); Crawford v. Washington 124 S. Ct 1354 (2004) State v. Staton, 610 S.E.2d 823 (2005) as it took away a vital piece of evidence from defense. There is evidence of a scuffle between me and victim (App. Pg 121; lines 16-18; Pg 136; lines 11-16; Pg 144; lines 19-20) so counsel was required to have it determined at this point who the DNA under victim fingernails it was. See, Hinton v. Alabama, 134 S. Ct 1081 (2014) By not seeking SLED to make this determination fell below objective standard of reasonableness Strickland, id. Since counsel testified at hearing, that I claimed it was not me and the case was based on identification (App. Pg 828-829) as well as fact trial counsel said she attacked their credibility (App. Pg 834; lines 9-25; Pg 835; lines 1-25; Pg 836; lines 1-22) it would be reasonable for counsel to do this with testimony from expert showing who it was after it had

been confirmed DNA evidence was not mines. Such evidence was critical to the credibility of Mr. Young who said he saw us fighting and quite obvious victim had been in a scuffle and only question is when and with whom (App. Pg 836; lines 15-22) or as counsel stated:

> "... But I thought that it was sufficient to say that his DNA was not -- that it was somebody else's DNA. That was the important part to get out."
>
> App. Pg 837; lines 18-21

Then if was not mine's, then it should be equally vital for counsel to determine who based on witness testimony was fighting victim. and if nothing more counsel testimony at hearing reveals she never considered making an independent investigation into this DNA evidence where trial counsel stated:

> "... that ther didn't even -- that ther could have looked to see if it matched one of the witnesses. but they didn't even do that; that it was fresh and that there was no time to clean up any DNA..."
>
> App. Pg 837; lines 5-9

If this was counsel thoughts. then Per court determination counsel was not ineffective when she failed to both investigate DNA evidence or call witness to be cross-examined violated my right to counsel and confrontation (App. Pg 876. 874) is wrong and not supported by Per or trial record. Because counsel could have explored this during cross of witness. who was an expert in this field. Moreover, as counsel stated "That it was fresh and that

there was no time to clean up any DNA" (App. Pg 837; lines 8-9) since counsel had this report before trial. It was counsel obligation under Wiggins v. Smith, 539 U.S. 510 (2003); Walker v. State, 723 S.E.2d 610 (2012) where court held:

> "Criminal defense attorneys have a duty to undertake a a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case."
>
> Walker, id at 615.

Failure to investigate this crucial piece of evidence, allowed counsel conduct to fall below objective standard at this critical stage and trial when my right to confrontation was waived by counsel. Even respondent seems too suggest in closing at hearing that:

> In regard to DNA analysis, Ms. Ford gave credible testimony that she didn't think that the analyst was necessary because she basically got out what she wanted, which was that Mr. Deas DNA was not present under the victims fingernails. She was able to allow to the jury about it without that testimony.
>
> App. Pg 859; lines 3-10

Such views go against professional norms, when counsel is aware of DNA under victims fingernails and subsequently thereafter it is determined not to be mines. Then a reasonable attorney, would want to determine who it belongs too it could potentially exonerate me, and especially in light of fact as she told PCR court I was claiming not to be at scene (App. Pg 841; lines 25; Pg 842

; lines 1-3) then it was all the more reasonable for counsel to do so. This statement by respondent at hearing does nothing more than belittle and unreasonably justify counsel waiver of my confrontation rights.

Question Three:

Whether Trial Counsel Was Ineffective for Not Challenging Statement from State Witness?

My trial counsel failed to challenge statement of Mr. Young, when he admitted at trial his will was overborne when he said that:

"No, he told me that -- he told me that this is a serious charge, and I ain't gel charged for others I was charge for this if I don't cooperate."

App. Pg 140; lines 16-19

The statement should be suppressed, once it became clear that as witness testified. Police said if he did not cooperate he would face more serious charge of murder. See Miranda v. Arizona, 384 U.S. 436 (1966) However, counsel did not challenge Mr. Young statement when he is in custody at time such statement is Given. Thus, the custody issue has been satisfied in accordance with Miranda, since during trial counsel elicited testimony from witness. See, State v. Franklin, 2014 WL 2582748 Accordingly, following is testimony from witness:

Q. And that if You helped him out he would make sure that You weren't charged with murder?

A. Yes Sir.

Q. You have never been charged with murder, have You?

A. No Sir.

App. Pg 141; lines 11-16

Q. And You told us how Osborne tried to call You Probably two or three times. Right?

A. Yes ma'am

Q. And the first time You said. I ain't no snitch. Right?

A. Yes

Q. Second time about October 25th. he started to threaten You with a criminal charge, didn't he?

A. Yes ma'am

Q. And You said. You can say I didn't see anything. Right?

A. I told him I'd talk to him but I had to get a lawyer.

App. Pg 265; lines 6-18

Q. And so he told You he would help You out with the bond?

A. He told me that if I don't cooperate. all right. I wouldn't get no bond. So I was thinking about my family. so I had to do what I had to do.

App. Pg 267; lines 2-6

Viewing Mr. Young testimony in its Proper content. As such, when witness told counsel he wanted and requested counsel (App. Pg 265 line 18) all questioning of witness should have stopped. But based on testimony it is clear interrogation continued. See, Edwards v. Arizona, 451 U.S. 477 (1981) Once these officers continued questioning, the witness will was overcome and in conjunction with testimony on both direct and cross states witness indicates how coercive Police conduct was. As the court in United States v. Braxton, 112 F.3d 777 (4th Cir. 1997) held that:

> "The Proper inquiry is whether the defendant's will has been overborne or his capacity for self-determination critically impaired."
>
> Braxton, id at 789..

Therefore, what Braxton instructs is in case at bar. Where Police took the witness into custody for obstruction of Justice, then told him that if he did not cooperate he would face more serious charge of murder. She have Put counsel on notice, that witness statement to Police and all other evidence obtained was done in violation of his constitutional rights. Moreover, while counsel did challenge identification of this witness, it is clear that statement and identification came together during this unconstitutional detention. Hence, to use detention as a tactic to obtain evidence when witness wishes not to do so is a method like all others condemned by Miranda as well as what our

State Supreme Court considered in State v. Core, 684 S.E. 2d 177 (2009) As such, I rely on Dickerson v. United States, 530 U.S. 428 (2000) for theory that court should view testimony of witness, when he not only requested but had such request denied. But when he said Police told him if he did not cooperate he would not Get a bond (APP. PG 267; lines 2-6) Therefore, the Per court ruled that:

> Based on all the forGoinG, this court finds and concludes the applicant has not established any constitutional violations or deprivations before or duriNG his trial.
>
> (APP. PG 881)

Clearly is wronG, when counsel knew or should have known before the trial witness was forced into GivinG a statement. Even if counsel did not know this due to witness refusal too speak with counsel, once at trial it became known. My lawyer had standinG too challenGe a statement Police obtain by coercive tactics Dickerson, id at 434, also Goes aGainst facts for court to rule that:

> This court also finds the applicant has failed to show what any additional investiGation in his case by counsel would have yielded. This court finds the applicant has failed to carry his burden of provinG counsel's performance was deficient and affected the outcome of his proceedinG.
>
> APP. PG 877

However, it is equally clear that court failed to consider circumstances under which Mr. YounG Gave a statement or consider fact he did not wish too speak with Police at all. As trial testimony indicates, the Police contacted him on numerous occassions and he refused to talk to them

and said "Tell them I did not see anything" or "I ain't no snitch" or "I'd talk to him but I had to get a lawyer" (App. Pg 266; lines 17-18) Detective Osborne was relentless in his quest to obtain a statement from Mr. Young and even went so far as obtaining a warrant for Obstruction Of Justice as well as threatening too charge Mr. Young with this murder charge (App. Pg. 141; lines 2 thru 16) When as herein, evidence is obtained through over-reaching Police conduct. The Miranda. Dickerson courts require that this evidence be suppressed, because due Process will be violated if it is used at my trial. Accordingly, state will argue Mr. Young selected me in a Photo line-up, and this fact is conceded by me. Nonetheless, state must also concede that Mr. Young testimony at trial was that:

Q: And You Picked out the Person he wanted You to Pick out, didn't You?

A: Yes Sir

Q: At the time You were arrested You were -- or at the time You did this line-up, You already knew that little Ricky had been arrested, correct?

A: Yes, Sir

Q: And You knew who detective Osborne wanted You to Pick out, correct?

A: Yes Sir?

Q: You did what he asked You to, right?

A: Yes, Sir.

App. Pg 141; lines 17-25; Pg 142; lines 1-3

Apparently state has not considered, and neither did lower court that this witness was so reluctant not to get involved he did whatever it

took to Get Detective from continued harassment. No matter how much state attempts too clean-up testimony, it can not escape fact that Miranda. BiGGers at no time allows statements or identification to be obtained in manner such as herein. AccordinGly, the state must recoGnize that without Mr. YounG BiGGers, Miranda testimony, Ms. Miles testimony would be insufficient to establish the Corpus Delecti Alinude for murder without unconstitutionally obtained statement or identification. Even in liGht of counsel challenGe too identification at Pre-trial hearinG (App. PG 120-149), it must be noted the trial court has not applied relevant facts bearinG on his view of events which took Place on day in question (App. PG 182; PG 183; line 1-18). Whereas, Mr. YounG said he had been PassinG out or in his own words:

> After the time that I dozed off, I was not PayinG attention to what is GoinG on. I walked off. A few minutes later when I come back -- I mean a few minutes later after I walked off around the corner I hear three Gunshots.
>
> App. PG 245; lines 1-4; PG 244; line 25

When witness testimony indicates, that he had Passed out after smokinG a blunt. Such identification testimony is subject to scrutiny under BiGGers as I alluded too, and it likewise calls for exclusion of any testimony from him about seeinG me with a Gun or firinG a Gun when based on his own account "He was not PayinG attention" or considerinG this testimony that:

> I saw little Ricky walk up to him, come and talk to him. So I was standinG on the corner of line and Nassau at the time. And I thouGht everythinG was alriGht so I just stand riGht there and let them two talk.
>
> App. PG 244; lines 15-19

Consistent with later testimony of him walkinG off, there is no way he can

identify me as the shooter if he was not around too witness shooting. At this Point while court seems to believe, Mr. Young testimony was

> While on cross he said he knew who officer wanted him to Pick out, he know what officer wanted him to do
> And he also admitted he feared a serious charge
> These were not the things that the officer threatened him with, nor implied to him.
>
> App. Pg 183; line 10-12, 13-14, 17-18

These are a few excerpts from court ruling, but it nonetheless must be asserted the court must consider validity of testimony when determining suggestive nature of Process. When the witness is reluctant to speak to Police and knows who Police want him too select and only does so to avoid a more Serious charge of murder. Then even if he saw me that night, he is subject too suppression because of his own testimony he left and did not see the shooting take Place and therefore can not testify to say he saw me do anything. Furthermore, his testimony contradicts court ruling since he clearly indicated that Detective told him he would Get no bond if he did not help him (App. Pg 267; lines 2-6) are material facts weighing on decision Contrary to state argument, that even without Mr. Young it still had other credible evidence to support Ms. Miles testimony. Despite such argument, my entire case hinged on credibility of witnesses and all the evidence that stemmed from Phone conversation at county Jail. Was not used for any other Purpose than attacking credibility, and same must be said about Prosecution using my statement as well as other witnesses attacking truthfulness of statement to Police. The state used this in order to bolster

credibility of its own witnesses was improper. My credibility was not at no time called into question by defense counsel, and even it was it merely as a matter of response to the blatant and illegal attack initiated by state throughout its entire case. From the Gun. telephone. Statement all by state to strengthen its case.

Wherefore. Applicant Prays court will Grant Writ.

Dated: 9th day of March, 2015.

Respectfully Submitted:

s/ Richard Deas

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