

THE STATE of South Carolina

IN THE Court of Appeals

Appeal from Spartanburg County

THE Honorable J. Dehan Cole, Circuit Judge

Keith Letmon SCDC# 214137 Appellant

THE STATE of South Carolina Respondent

Motion for Rehearing EN BANC

Now comes the Appellant, pursuant to Rule 219 (B) of the South Carolina Appellate Court Rules, requesting a rehearing "EN BANC" regarding the grounds for relief raised in appeal for the ~~the~~ ABOVE MATTER.

Appellant raised on appeal "Misidentification" under "Neil v Biggers, 409 U.S. 188 (1972)". In Biggers, the Supreme Court of the United States developed a two prong inquiry to determine the admissibility of an out-of-court identification. Moore 343 S.C. at 287, 540 S.E. 2d at 477. First a court must determine whether the identification process was unduly suggestive. The South Carolina Court of Appeals agreed that the process was suggestive. Second a court must determine

Whether the identification was nevertheless so reliable that the substantial likelihood of mis-identification existed. THE SOUTH CAROLINA COURT OF APPEALS held that the identification was reliable. I differ. Note that in the second prong from the above matter the following should be considered, to determine the likelihood of mis-identification. (1) THE WITNESS'S OPPORTUNITY TO VIEW THE PERPETRATOR AT THE TIME OF THE CRIME. (2) THE WITNESS'S DEGREE OF ATTENTION. (3) THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE PERPETRATOR (4) THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE TIME OF CONFRONTATION AND (5.) THE LENGTH OF TIME BETWEEN THE CRIME AND CONFRONTATION.

Copeland claimed to have known Appellant for six to seven years. "At the time of the crime" Copeland stated Tr. pg 108 2-3 "He got out, he got out and got by the tree and raised up and started shooting. From the Forensic Diagram of the Spartanburg City Police Dept. From the tree to the porch where Copeland alleged to have been seated is 21' or 22' feet away not 10 feet as Copeland stated. Tr pg 114-115 Copeland stated everybody ran him to the other side of the house,

And the crime happened very fast. No porch light, SAM intoxicated, high off refer, TR pg 110-111 Copeland admits to drinking two or three bottles of Burnett's which is liquor. TR pg 140 officer Stephen McClure said Copeland smelled of alcohol. Simmons v US 390 US 377, 88 S.Ct 967 FN3 (regardless of how the misidentification comes about, the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually * 384 seen, reducing the trustworthiness of ~~the~~ subsequent line up or courtroom identifications.)

Pross At the time of the crime in her statement TR pgs 173-174. she states she didn't see his face good. ~~the~~ Description she gave was that ~~the~~ perpetrator was 6 foot 160 pounds. Mc Jan 58 172. Totally different. Her certainty TR pgs 21-22. Detective Porter says she may have picked Shondrell Holmes out of memory first with him. That's the other Slow Det. Porter says he knows from the North Side. That's what the witnesses first told the police it was Slow "Shondrell Holmes" from the Northside before Det. Porter came in with his suggestiveness. TR pgs 43-44 Det. Nelson admits to not completing form, Admission in

least of Ross see face, as well as other Admonition forms of other witnesses Capeland, Robinson, we don't know whom Ross picked out. Stated above she may have picked out Shondell Holmes. Det. Pelters words. In all forms besides Ross Admonition form they have the # of the picture that the witness looked at long or picked in Ross there was none of that.

Robinson stated in her admonition form she could not identify no-one. So at the time of the crime she could not see the perpetrator. After seeing Appalants face on news and newspaper. it caused her to appalant.

JESSE Worthy in step 9 182, 20-20 Did you see what happened? "Answer" No I did not.

The whole issue here is at the time of the crime neither witness saw who committed this act. The second prong of one of them is at the time of the crime the witnesses opportunity to view the perpetrator. Not who who others realized or who you think it might be. The witnesses degree of attention Every one saw as Capeland testified to when the shot rang.

off and it happened fast. Someone's shooting and you don't know at who or who the person is you're running for safety not trying to see what's going on. This whole case rests on misidentification. Once the witnesses said that it was slow from the north side of town the investigation should have started there, but Detective Porter took it upon himself to suggest that it would not be the slow from the north side but the slow from the south side. Tr pg 12, lines 1-5, Tr pg 19 3-5 also see attachments. So for the above reasons the Appellant is asking for a new trial to correct this injustice that was ~~had~~ handed.

Also other meritorious issues that Appellant Counsel didn't bring to the court's attention that Appellant advised Counsel to do but did not.

- 1.) Not bringing to the court's attention that trial judge didn't rule on several objections made by trial counsel pgs 250-252. Trial Counsel objected saying that the state didn't tie the said one to Appellant.
- 2.) There were gloves being discussed and wasn't allowed to go into evidence due to chain of

Custody ISSUES. TRIAL counsel moved to strike testimony of the gloves from the record. Trial Judge allowed ~~to~~ testimony and the pictures of the gloves to be entered into evidence. Abuse of Discretion.

It affected Appellant by painting a picture of they got evidence that ~~is~~ links appellant to said crime.

All of these issues led to a cumulative ~~of~~ effect that made it impossible to get a fair trial.

Respectfully Submitted

S Keith Brown

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