THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEE COUNTY
Court of Common Pleas

George C. James JR. Circuit Court Judge

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MAR 31 2015

S.C. Supreme Court

CASE NO: 2010-CP-31-0052
Appeal NO: 2014-001349

Mr. Unula Boo-Shawn Abebe #285447 . . . . Petitioner

VS.

State of South Carolina . . . . Respondent

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PETITION FOR WRIT OF CERTIORARI

Mr. Unula B. Abebe #285447
McCI/SMU # A-101
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McCormick S.C. 29899
Pro SE Petitioner

Other Counsel of Record:
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Questions Presented

1. Did the Solicitor violate current Brady laws by not disclosing any favorable Evidence to the accused?
2. Can a Brady claim be raised on direct appeal if it was not preserved for review by the appellate Court.?
3. Can a Brady, Selective Prosecution and Prosecutorial Misconduct not preserved for Appellate review via direct Appeal be raised in a P.C.R?
4. Did the State commit the act of Selective Prosecution?
5. Did the Solicitor Commit Prosecutorial Misconduct?

Statement of the Case

The Petitioner was indicted by the Lee County grand jury for the offense of Assault upon a Correctional Employee. He appeared on April 1st 2009 for trial before Judge. Howard P. King. Petitioner was pro se at trial and remained pro se in this matter. Mr. Paul Fata was the trial Solicitor.

The Petitioner filed a Application for Post Conviction Relief March 2010. The application raised three issues: Brady Violation, Prosecutorial Misconduct and Selective Prosecution.

The application was heard on February 25 2014 by Judge George C. James J.R and dismissed on April 17 2014. A motion to Alter, Amend and Reconsidered was filed but ~~also~~ denied on May 16 2014

Assistant Attorney Gen. Daniel Gourley represented the State.

ARGUMENT

Question: #1: Did the Solicitor violate current Brady laws by not disclosing any favorable Evidence?

Yes, the Solicitor did violate current Brady laws by not disclosing any favorable Evidence. In United States v. Bagley 105 S.Ct. 3375 (1985) The Bagley court held that regardless of request, favorable Evidence is Material and constitutional Error results from its suppression by the government "if there is a reasonable probability that had the Evidence been disclosed to the defense, the results of the proceeding would have been different." 105 S.Ct. at 3383.

The Supreme Court in Kyles vs. Whitley 115 S.Ct. 1555, 1566 (1995) Stated that Bagley's touchstone of Materiality is a "reasonable probability" of a different result and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the Evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the governments evidentiary suppression "undermines Confidence in the outcome of trial" 105 S.Ct. at 3381.

In 1985, the Bagley court stated that favorable Evidence is material. Then in 2009, the Cone v. Bell court held that Evidence is material when there is a "reasonable probability that the withheld Evidence would have altered at least one jurors assessment of the case."

The ~~Ba~~ Cone v. Bell court gave an Example of this by citing with approval Banks v Dretke 540 U.S. 668, 675 (2004) where the prosecution did not disclose that one key witness was a paid government informant and another had been coached by the prosecution. The court held that "one can hardly be confident that defendant received a fair trial given the jury's ignorance of the withheld Evidence." Id at 702

The Kyles court however held that materiality under Bagley is Evaluated in a distinct cumulative analysis in which "suppression Evidence is considered collectively not item by item" Id 514 U.S. at 436

In the case at bar, the Solicitor ~~testi~~ testified that he withheld all the witness statements, photographs, police reports ect. SEE P.C.R transcript, pg. 8 line 10-17

The Kyles court cited several cases with approval that supports the conclusion that the Solicitors withholding witness statements, police reports ect court violate Brady. SEE Kyles citing Bowen v. Maynard 799 F.2d. 593, 613 (CA 10 1986) ("A common trial tactic of a defense lawyer's is to discredit the caliber of the investigation or the decision to charge the defendant and we may consider such use in assessing a possible Brady violation")

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The Kyles court also cited with approval Lindsey v. King 769 F.2d. 1034 1042 (CA5 1985) (awarding new trial of prisoner convicted in Louisiana state court because withheld Brady Evidence "carried with it the potential... for the ... discrediting ... of the police methods employed in assembling the case".)

At the P.C.R hearing, the Solicitor stated that he would have made disclosure had a request for it been made. SEE P.C.R transcript pg. 7 line 1-3. He stated such as if his ~~[illegible]~~ duty to disclose required a request from the defendant but as the Bagley court stated, it didnt.

Because of the Solicitor withholding "all" evidence, I was not able to prepare a defense. I wasn't able to do the following:

1. Prepare a witness questionnaire sheets for each witness because not only did I not know who would be testifying but I also didnt know what the witness allegingly witnessed. I would have known had the Solicitor turned over the witness statements and every report that documented statements made by witness Lloyd, Williams and the victim.

   Because of the solicitors refusal to disclose the witness statements, I was unable to question the witnesses. SEE Trial Transcript pg. 34 line 8-10, pg. 36 lines 14-18, pg. 39 lines 12-14 I had to play everything by eye and ear. And by the time I knew what the state had as evidence, trial was over with. And it wasn't until trial had ended that I was able to form questions that I would have liked to ~~question~~ asked the witnesses.

2. The police reports and photographs not disclosed would have assisted in me questioning the witnesses, had this evidence been given to me along with the withheld witness statements. I would have also have had the opportunity to see if whether I could discredit the police decision to charge me.

At my prison disciplinary hearing, the prison disciplinary officer read several reports verbally about the incident involving the allege assaults but prison incident reports are not made under oath. And my memory is not that good to have been able to ~~read~~ remember each word of the report to honestly say by the time of trial, I knew exactly what the witnesses were willing to say under oath. I didnt even know if the Solicitor was going to call Lloyd or Williams as witnesses or not.

The Cone v. Bell Court stated that "The defendant must show that the favorable evidence withheld could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" Id at 435.

This can be seen in my inability to mount any kind of defense. ~~It was~~ This isnt a case where the Solicitor withheld one, two or even three items of evidence, this case involves the withholding of every item of evidence.

In U.S. v. Armstrong 517 U.S. 456, 462 (1996) the court held that "Material to the preparation of **the defendants defense**" may be limited to discovery of evidence to rebut the governments case-in-chief. The court further stated that "**the defendants defense**" means the defendants response to the Governments case-in-chief.

Therefore, I was ~~a~~ entitled to the witness statements, police reports and photographs and chain of evidence in preparation of my defense because those item's would have allowed me to respond to the Governments case-in-chief. And because I wasnt given those items, I wasnt able to respond and thats evident in the trial transcript. ~~see~~ At trial I was unable to question the victim. SEE Trial transcript pg. 34 line 8-10. I was also unable to cross examine the witnesses adequately. SEE Trial Transcript ~~36~~ pg. 36 line 14-18 and pg. 39 line 12-14 This was noted at the P.C.R hearing. SEE P.C.R Transcript pg. 9 line 4-15. in Appendix-A and Trial Transcript pg's 33-40 in Appendix-B

Question #2: Can a Brady Claim be raised on direct appeal if it was not preserved for appellate review by the trial court?

No, a brady claim cannot be raised on direct appeal unless it is preserved by an objection or other motions made to the trial court and actually ruled on. There is nothing on the record that shows the issues I raised were preserved for direct appellate review.

Question #3: Can a Brady, Selective Prosecution and Prosecutorial Misconduct Claim, not preserved for Appellate review via direct appeal be raised in a P.C.R application?

Yes, it can. The court in Gibson v. State 495 S.E.2d 426, 427 (1998) held that the Uniform Post Conviction Procedure Act is "broadly inclusive and will rarely be

inadequate or unavailable to test the legality of the detention." The court further stated that constitutional violations can't even be raise in a P.C.R proceeding unless the issue could have been raised on direct appeal.

Since my issues could not properly be raised on direct appeal, because they weren't preserved for review through that forum, the issues are proper in a P.C.R proceeding.

Now if the court wanted me to commit the Tort of "Abuse of Process" by instituting a direct appeal while knowing the issues were not preserved, then thats a diffrent story. I did what I was suppose to do.

Question #4: Did the State commit the act of Selective Prosecution?

The court held in U.S. v. Armstrong 517 U.S. at 464 that to overcome the presumption of regularity that attaches to prosecutorial decisions and to establish a prima facie case of impermissible selective prosecution, a defendant must show "clear evidence" of both "discriminatory effect" and "discriminatory purpose."

In sum the court requires a defendant to produce 1. Clear Evidence, 2 of discriminatory effect and 3 discriminatory purpose.

CLEAR EVIDENCE OF DISCRIMINATORY EFFECT & PURPOSE

The Evidence: is the statement I submitted to the prosecuting agency before trial. Said statement detailed incidents where the victim had sexually assaulted the defendant on numerous occassions. Also, the statement detailed incidents where the witness, K. Lloyd had been involved in incidents where I was assault & battered and subjected to cruel and unusual punishment.

The Effect: is that two assaults allegingly occured, one where the victim accused the defendant and the other where the defendant accused the victim. When the victim made his accusations, an official investigation by investigator Greer was started against the defendant. This investigation involved interviews. But when the defendant made accusation, his statement was ignored. Not only was it ignored, but it was withheld by the state in the discovery process preventing me from showing it to the jury. No one asked me about what happen to me. They were only trying to prosecute me for what the victim accused me of doing to him. Therefore the discriminatory effect was that out of two people, one was given due process and the protection of the law and the other (me) wasn't.

The Purpose: The alleged victim Mr. L. Lorrick submitted his statement first and based on what he said, Inv. L. Greer obtained a arrest warrant and had me served with it. My statement came after the arrest. And it countered everything stated in the warrants affidavit. Had Inv. Greer given me the same protection of the law that he gave Mr. Lorick, it would mean that he Inv. Greer had a warrant issued based on lies and untrue statements. So the discriminatory purpose was to cover up the possibility that Inv. Greer obtained a warrant based on lies and the prosecution followed, without prosecuting Lorrick, to maintain the states case against me. Its the same with the prosecutor. If he would have sought a prosecution of Lorrick, it would have looked like his case against me was based on lies. And since the prosecutor and Lorrick were both officers of the state, I was selectively prosecuted and Lorrick not.

Since the state is still refusing to turn over my statement, the only proof that I have of its existence is a certified mail "Return Receipt" dated 3-16-09 SEE Exhibit-A of Appendix-G. S.C.D.C. has on numerous occassions chosen not to criminally prosecute their officers. SEE Appendix-E which is an Affidavit stating events I submitted to authorities but no one has come talk to me about. The affidavit is dated Jan. 6 2015.

Question #5: Did the Solicitor commit prosecutorial misconduct?

YES because under the rules of professional conduct 3.8 the prosecutor in a criminal cass is required to make timely disclosure to the defense of all evidence and information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. Also rule 3.4(c) states that the solicitor shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exist.

U.S. v. Bagley's holding that the solicitor was obligated to disclose regardless of request was a clearly establish law at the time of the nondisclosure so Mr. cannot claim ignorance of the law.

CONCLUSION

Therefore, the ruling of the P.C.R court must be overturned.

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/s/ [signature]

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McCormick S.C.
Feb. 17, 2015

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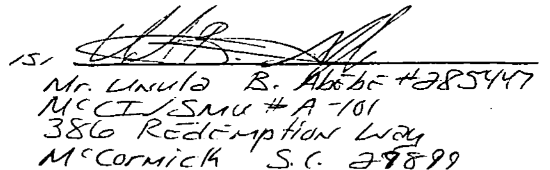
PROOF OF SERVICE

I Mr. Unula B. Abebe do certify that on March 31, 2015 I served one Petition for Writ of Certiorari upon:

1. Clerk of Court P.O. BOX # 11330 Columbia S.C. 29211
2. Attorney Gen Office P.O. BOX # 11549 Columbia S.C. 29211

By depositing the same into the U.S. mail box, postage paid. I certify that the above is true

McCormick S.C.
Feb. 2015



/s/
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