

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

William H. Seals, Jr., Circuit Court Judge

RECEIVED

APR 8 2015

S.C. Supreme Court

LATISHA COCHRAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001388

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's due process rights under the Fourteenth Amendment were violated when the state failed to disclose its plea agreement with co-defendant Quentin Epps and failed to correct Epps' false testimony during Petitioner's trial concerning the existence of the plea agreement?

STATEMENT

A Florence County Grand Jury indicted Petitioner at the April 2, 2009 term of General Sessions for armed robbery and possession of a weapon during the commission of a violent crime. App. 420-241. Her case was called to trial on October 18, 2010 before the Honorable Michael G. Nettles, and a jury. Assistant Solicitors Patricia Parr and Davis Richardson represented the state, and Jesse S. Cartrette represented Petitioner. App. 1.

On October 19, 2010, the jury found Petitioner guilty of armed robbery. App. 214, ll. 12-25. The state ultimately decided not to go forward with the weapons offense after the court expressed concern that the hand of one is the hand of all principle did not apply to that charge. App. 149, l. 19 – 150, l. 8. Petitioner was sentenced by Judge Nettles to thirteen years imprisonment. App. 226, ll. 10-17.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Cochran, Op. No. 2012-UP-310 (S.C. Ct. App. Filed May 16, 2012); App. 252.

On July 2, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 253-259. The state filed a return to this application dated November 11, 2012. App. 260-264. The matter proceeded to an evidentiary hearing on March 1, 2013 before the Honorable William H. Seals, Jr. App. 279. Assistant Attorney General T. Andrew Johnson represented the state, and Tristan M. Shaffer represented Petitioner. App. 279. By order dated March 22, 2013, Judge Seals denied Petitioner relief. App. 398-407. On April 8, 2013, Petitioner filed a Motion to Reconsider pursuant to Rule 59(e), SCRPC. App. 408-416. On June 2, 2014, the court denied the Motion to Reconsider finding that the prior order did not contain any errors or omissions that would require reconsideration of the court's ruling. App. 417-420.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's due process rights under the Fourteenth Amendment were violated when the state failed to disclose its plea agreement with co-defendant Quentin Epps and failed to correct Epps' false testimony during Petitioner's trial concerning the existence of the plea agreement.

Relevant Facts

On November 15, 2008, William Hayes received a telephone call from an unknown female on a private line. The unknown female asked Hayes if he was going out to the club that night. App. 71, ll. 10-21; App. 72, ll. 16-23. Later that evening, Hayes was attacked and robbed by three masked men as he was leaving his home. App. 71, l. 22 – 72, l. 7; App. 112, ll. 5-11. Two of the men were armed with real firearms, while the third was armed with a toy pistol. App. 85, ll. 13-17; App. 112, ll. 12-15; App. 118, ll. 6-7. The robbers ordered Hayes to the ground and one of the masked men struck him in the head with the toy pistol. App. 77, ll. 12-25. The robbers stole five hundred dollars in cash and several credit cards from Hayes. App. 76, ll. 15-16; App. 113, l. 21 – 114, l. 6. While leaving, one of the robbers fired a real pistol into the air. App. 81, ll. 14-21; App. 116, ll. 2-7. Around the same time that shots were fired, a neighbor saw three men jumping into a dark colored Toyota Camry. App. 93, l. 5 – 94, l. 2.

After the robbery, Quentin Epps was seen using one of the stolen credit cards at Wal-Mart. App. 114, ll. 16-19; App. 126, ll. 3-13. Law enforcement questioned Epps and he ended up giving two statements. App. 126, l. 14 – 127, l. 1. Epps was the owner of a dark purple Toyota Camry. App. 110, ll. 16-23. He admitted knowing about the robbery, but tried to deny any involvement claiming he was merely present. Epps gave the name of several people that he alleged were also involved in the robbery. App. 108, ll. 14-24. He claimed that Petitioner had made the call to Hayes and that she was the getaway driver after the robbery. App. 109, ll. 9-25; App. 115, ll. 14-24. No

physical evidence was ever collected linking Petitioner to the robbery. Epps, Petitioner, Montarrio Graham, Jerry Bush, and Chazmonte Brown were all arrested and charged with armed robbery. App. 108, ll. 14-24.

On Christmas Eve, after speaking with Epps, law enforcement interviewed Petitioner. App. 133, l. 23 – 134, l. 14. Petitioner maintained that she gave an audiotaped statement because the police told her that she had to cooperate if she wanted to go home to her children for Christmas. Her statement was consistent with Epps' version of what occurred. Petitioner has consistently maintained that this story is not accurate and that her statement was not voluntarily given. App. 35, l. 2 – 39, l. 17. She challenged the admissibility of her statements pretrial, on direct appeal, and at the PCR hearing. App. 252; App. 401.

Because of the lack of physical evidence, the state's case at trial was primarily based upon Epps' testimony and the statement Petitioner maintained was involuntarily given. During the trial, Epps testified under oath before the jury that he had not been offered a plea deal from the state in exchange for his cooperation and testimony against Petitioner. The following exchange took place during Epps' direct examination:

Q: Okay. Mr. Epps, have you been offered anything special to testify here today?

A: No, sir.

Q: You hadn't been offered any sort of special plea deal in order for you to testify here today; is that right?

A: Right.

App. 116, l. 23 – 117, l. 3.

During cross-examination, trial counsel questioned Epps further about a possible plea deal. The following exchange occurred:

Q: You said you weren't offered anything special to testify today?

A: No, sir.

Q: Isn't it true, though, that you anticipate the possibility of a better deal or you wouldn't be here today?

A: No, sir.

Q: So you're willing to make a statement against interest knowing that it can be used against you in a court of law later?

A: Right.

Q: You [have] been offered no deal?

A: No, sir.

Q: Isn't it true that you hope to get a better deal because of your cooperation today?

A: Yes, sir.

App. 118, l. 13 – 119, l. 3.

The jury ultimately convicted Petitioner of armed robbery and she was sentenced to thirteen years imprisonment. App. 226, ll. 10-17.

On December 15, 2010, approximately two months after Petitioner's trial, her co-defendant, Montarrio Graham, proceeded to trial. Epps also testified against Graham. During his testimony against Graham, Epps likewise claimed he had not been offered a plea deal. Graham was convicted and sentence to twenty-two years. App. 267.

On January 24, 2011, Epps pled guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation. App. 267.

While his direct appeal was pending, Montarrio Graham learned that Epps had in fact been offered a plea deal before Petitioner and Graham's trial and had falsely testified at both trials. Graham withdrew his direct appeal and filed an application for post-conviction relief. An

evidentiary hearing was held before the Honorable Thomas A. Russo. Epps' trial counsel, Henry Anderson, testified at the hearing that the state had offered to reduce Epps' armed robbery charge to a lesser offense in exchange for his testimony against Petitioner, Graham, and the other co-defendants. App. 267-268. By order dated November 2, 2012, Judge Russo granted Graham post-conviction relief pursuant to Napue v. Illinois, 360 U.S. 264 (1959) and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). App. 267; App. 270-278. On December 6, 2012, Graham was notified that the state would not appeal Judge Russo's order. See App. 268.

Before Petitioner's PCR hearing, PCR counsel, Tristan Shaffer, filed a motion to preclude the state from asserting that Epps did not have a plea deal with the state based on collateral estoppel. App. 265. Petitioner argued that because Judge Russo had already found that a plea agreement existed between Epps and the state that collateral estoppel prevented the state from re-litigating the issue. App. 268-269. While it appears that Judge Seals ultimately denied the motion, his specific ruling is unclear as the parties discussed the motion in chambers. See App. 290, ll. 2-15; see also App. 408-409.

PCR Hearing

Henry Anderson, who represented Quentin Epps, testified on Petitioner's behalf at the evidentiary hearing. App. 291, ll. 9-21. Anderson explained that before Epps agreed to cooperate with the state and testify against Petitioner and his other co-defendants, the solicitor offered to recommend a sentence of ten years imprisonment, which was the mandatory minimum, if Epps pled guilty to armed robbery. App. 292, ll. 8-16. However, Epps ultimately agreed to testify against Petitioner, Graham, and the other co-defendants. Anderson testified that in exchange for his cooperation and testimony, the solicitors offered to reduce Epps' armed robbery charge to a lesser offense to allow Epps to avoid the ten year mandatory minimum sentence that the armed robbery

charge carried. App. 292, ll. 17-21. Anderson said this deal was made before Epps testified against Petitioner. App. 292, ll. 22-24.

Anderson explained that he and Epps met with Assistant Solicitors Patricia Parr and David Richardson for over an hour before Petitioner's trial. During this meeting, the solicitors questioned Epps about the armed robbery, including the details of what happened that night and who was involved. Anderson testified that it was during this meeting that the solicitors told Anderson and Epps that they would reduce Epps' armed robbery charge to a lesser offense if he "continued to tell the truth" and testified at Petitioner's trial consistent with what he had told them during their meeting. App. 293, ll. 7-24; App. 294, l. 23 – 295, l. 20.

Moreover, Anderson explained that he "didn't want there to be any confusion" about the plea deal so he confirmed at the end of their meeting with Parr and Richardson what the parties had agreed upon. He stated, "I mean, if my client [Epps] was going to testify I wanted him to get the benefit of the bargain." Consequently, Anderson made sure there was a plea deal in place before Epps testified against Petitioner. App. 296, l. 8 – 297, l. 16.

According to Anderson, Epps ultimately pled guilty to a lesser offense and was sentenced to only eighteen months imprisonment. App. 292, ll. 5-7; App. 294, ll. 2-9.

Jesse Cartrette, Petitioner's trial counsel, testified that he was unaware of any plea deal between Epps and the state and that the solicitors never disclosed to him that they had offered Epps a plea deal before he testified against Petitioner. App. 306, l. 9 – 307, l. 9; App. 311, ll. 4-5.

Petitioner testified that she first learned that Epps had been offered a plea deal when PCR counsel, Tristan Shaffer, wrote to her a few months before her evidentiary hearing.¹ The letter informed Petitioner that Epps had been offered a plea deal before her trial and had falsely testified during her trial about the deal. Petitioner maintained that before Shaffer sent her this letter she was unaware that Epps had had a plea deal with the state. App. 365, l. 5 – 366, l. 11. She knew nothing prior to her trial about a plea agreement between Epps and the solicitors. App. 367, ll. 17-19. Moreover, the assistant solicitor never told her before her trial that she offered Epps a plea in exchange for his cooperation and testimony. App. 368, ll. 4-8.

Petitioner explained that the only offer she had received from the state was a sentence recommendation of ten years imprisonment if she pled guilty to armed robbery. App. 360, ll. 13-17. This was the same offer Epps had received before he agreed to cooperate with the state.

Additionally, as mentioned above, Petitioner has always maintained that the statement she gave to law enforcement on Christmas Eve 2008 was coerced and involuntarily given. She testified at the PCR hearing that Officer McAllister “took me into the police department in Lake City and walked me to the back and set me in front of him, and he was telling me that he kn[ew] everything from Quentin Eppes and he got everything he need and I need to cooperate and if I go with what he had that I can go home, be home with my kids for Christmas.” App. 363, ll. 1-13. She said she “end[ed] up listening to what he [Officer McAllister] had and made a statement,” but that her statement was not truthful because she did not see the armed robbery and was not

¹ Tristan Shaffer represented Montarrio Graham during his PCR proceedings. After Graham was granted relief by Judge Russo, Shaffer wrote Petitioner a letter informing her that (1) Graham had been granted relief and (2) that Epps had been offered a plea deal before her trial and had falsely testified during her trial about the deal. Pheobe A. Clarke was originally appointed to represent Petitioner at PCR. Shaffer undertook representation of Petitioner about three weeks before her evidentiary hearing and Clark was relieved as counsel. App. 281, l. 23 – 282, l. 3; App. 365, l. 5 – 366, l. 11.

there. App. 363, ll. 14-22. Petitioner maintained that the only reason she gave the statement was because she was afraid and wanted to go home to her children for Christmas. App. 363, l. 25 – 364, l. 5.

Patricia Parr, the assistant solicitor who prosecuted Petitioner, Epps, Graham, and their other co-defendants, testified that she and David Richardson, who also prosecuted these cases, approached counsel for both Petitioner and Epps about cooperating with the state. Parr maintained that Petitioner did not want to cooperate with the state because she did not want to testify against her co-defendant Chazmonte Brown, who was the father of her unborn child. App. 381, ll. 5-22. However, Epps indicated through his counsel Henry Anderson that he wanted to cooperate with the state. App. 381, ll. 22-24.

Parr maintained that she and Anderson “did not have any specific agreement as to what the defendant [Epps] would plead guilty to.” App. 381, l. 22 – 382, l. 1. She said that Anderson wanted her to reduce Epps’ armed robbery charge to a lesser offense so that Epps could avoid the ten year mandatory minimum sentence armed robbery carried. App. 387, l. 19 – 388, l. 2. While Parr did not tell Anderson what she would be willing to recommend as far as the specific charge and sentence, she admitted that she told Anderson Epps “would get some help if he cooperated or he would get some consideration with cooperation.” App. 388, ll. 3-19.

Order of Dismissal

In the order the dismissal, the PCR court glossed over Henry Anderson’s testimony at the evidentiary hearing. The court stated, “Anderson testified he spoke with the State about possible deals before any trials began, and after Epps testified Epps was allowed to plead to a lesser charge.” App. 404. However, the court wholly ignored Anderson’s unambiguous testimony that before Petitioner’s trial the state offered to reduce Epps’ armed robbery charge to a lesser offense so that he

could avoid the ten year mandatory minimum sentence. See App. 292, ll. 17-21. Instead, the court focused mostly on Parr's testimony that "they 'did not have any agreement as to what . . . But that he [Epps] would get some help in consideration for his testimony.'" App. 404. The court also stressed that during cross-examination Epps acknowledged that he hoped for a better deal because of his cooperation. App. 403-404.

Based on Parr's testimony and Epps' acknowledgement on cross-examination that he hoped to get a better deal in exchange for his cooperation, the court found Petitioner's claim that the state failed to reveal its deal with Epps and correct his false testimony to be without merit. App. 403-404. The court also found that Petitioner failed to show how the outcome of her trial would have been different if Epps had testified differently about his plea deal with the state. App. 405. Lastly, the court noted that Petitioner failed "to call Epps to proffer his understanding of favorable treatment." App. 405.

Motion to Reconsider Pursuant to Rule 59(e), SCRPC

In her motion to reconsider, Petitioner argued that the findings of fact in the order of dismissal were not supported by the record. Petitioner stressed Anderson's testimony that the prosecution had agreed to reduce Epps' armed robbery charge to secure his testimony and cooperation and Assistant Solicitor Parr's testimony that Epps would "get some help in consideration for his testimony." She argued that consideration in exchange for testimony is a deal. App. 408-409. She also emphasized that because trial counsel was not aware of any deal between the assistant solicitors and Epps, he could not impeach Epps when he testified that he had not been offered a plea deal in exchange for his testimony. App. 409.

Moreover, Petitioner argued that the court applied the wrong prejudice standard in the order of dismissal. She asserted that under Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006),

prejudice is presumed when a prosecutor fails to correct knowingly false testimony. App. 409. She noted that in Riddle, the South Carolina Supreme Court did not consider prejudice when it found that the “PCR judge erred in concluding that the State was not obligated to correct [a witness’s] false testimony, and failing to hold that this violation of petitioner’s due process rights required that he be granted a new trial.” Riddle, 369 S.C. at 48, 631 S.E.2d at 75; See App. 409. However, Petitioner argued that even if prejudice is required, it is clear that if the jury had been aware of Epps’ perjury it would have affected the outcome of her trial. App. 410.

Furthermore, Petitioner asserted that the order of dismissal failed to address her argument that failure to disclose the plea deal with Epps was a Brady violation.² She maintained that the plea deal was material and that she was prejudiced because she was unable to effectively impeach Epps with the existence of the deal. Petitioner requested the court to make a finding that her due process rights under Brady were violated. App. 410.

Order Denying Motion to Reconsider

In the order denying Petitioner’s motion to reconsider, the court held that Petitioner’s case was distinguishable from Napue v. Illinois, 360 U.S. 264 (1959). The court noted that “[i]n Napue, the co-defendant unequivocally testified he had not been promised a reduced sentence in exchange for his testimony, even though the state’s attorney had made such a promise.” App. 417. However, the court said that during Petitioner’s trial, “the co-defendant clearly testified he expected a better deal in exchange for his cooperation.” App. 417. The PCR court found that Epps’ testimony “that he expected a better deal is in line with the understanding of the agreement as testified to by the solicitor and the co-defendant’s attorney.” App. 418. Therefore, the court found Petitioner had “not

² Brady v. Maryland, 373 U.S. 83 (1963)

demonstrated her conviction was obtained with the use of false testimony such as to run afoul of the standard set forth in Napue.” App. 418.

Moreover, the court found that there was no Brady violation in Petitioner’s case. While the court never found that a plea offer did not exist, it held that “[e]ven if the State had an agreement with the co-defendant [Epps], [Petitioner] has not shown how the non-disclosure of this deal prejudiced her case.” App. 418. The court noted that trial counsel was able to get Epps “to admit on the stand he expected a better deal for testifying.” App. 418. Therefore, the court found that impeachment of Epps with the existence of a plea deal would not have led to a different result at trial. App. 418.

Discussion

Petitioner’s right to due process under the Fourteenth Amendment was violated when the state failed to disclose its plea deal with Epps and when the assistant solicitors failed to correct Epps’ false testimony at trial concerning the existence of the deal. Petitioner was prejudiced because if the state had properly disclosed the plea deal to Petitioner or corrected Epps’ false testimony, the outcome of her trial would have been different.

“It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.” Napue v. Illinois, 360 U.S. 264, 269 (1959) (internal citations omitted); See Giglio v. United States, 405 U.S. 150, 153 (1972) (“[A] prosecutor’s deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.”). “The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Id. (internal citations omitted). “The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty,

does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." Id.

In Napue, a co-defendant testified against Napue at his trial for the murder of a law enforcement officer. The co-defendant falsely testified that he had been promised no consideration for his testimony when in fact the prosecutor had promised the co-defendant that if he testified against Napue the prosecutor would recommend a reduction in his sentence. Id. at 266-267. The United States Supreme Court granted Napue a new trial after it found that the false testimony used by the state in securing Napue's conviction may have had an effect on the outcome of his trial. Id. at 272.

In this case, Epps' trial counsel, Henry Anderson, testified that before Petitioner's trial, the assistant solicitors had agreed to reduce Epps' armed robbery charge to a lesser offense in exchange for his cooperation and testimony against Petitioner and her other co-defendants. Anderson testified that Epps was present when this agreement was made and was aware of the plea deal before he testified at Petitioner's trial. App. 292, l. 17 – 295, l. 20. The PCR court made no credibility finding regarding Anderson's testimony. Patricia Parr, the assistant solicitor who prosecuted Petitioner and Epps, admitted that while the parties did not reach a specific agreement as to what offense Epps would be required to plead guilty to, she had agreed to give Epps "some help or some consideration for his cooperation." App. 382, ll. 3-9.

Before Epps agreed to cooperate with the state and testify against his co-defendants, the state had already offered to recommend the ten year mandatory minimum sentence if Epps pled guilty to armed robbery. See App. 292, ll. 13-16. The only additional help or consideration the

solicitor could have given Epps in exchange for his cooperation and testimony was a reduction of his charge and, with that, his sentence. Parr conceded that Anderson wanted to get Epps “under the armed robbery charge.” App. 381, l. 22 – 382, l. 2. Therefore, it is clear that a plea deal existed between Epps and the state where the state would reduce his armed robbery charge so that he could avoid the ten year mandatory minimum.³

Further evidence of the existence of this plea deal is the fact the Epps ultimately pled guilty to accessory after the fact and was sentenced to only eighteen months imprisonment. See App. 267.

Not only did a plea deal exist between Epps and the state, but the assistant solicitors failed to disclose the plea deal to Petitioner and her trial counsel, Jesse Cartette. Cartette testified that he was never informed of the existence of a plea deal before Petitioner’s trial. App. 306, l. 21 – 307, l. 9. Petitioner likewise testified that she was not aware of a plea deal and that she first learned of Epps’ plea agreement with the state when PCR counsel, Tristan Shaffer, wrote to her a few months before her PCR hearing. App. 365, l. 5 – 366, l. 11. The state’s failure to disclose its plea agreement with Epps to Petitioner before her trial violated her due process rights pursuant to Napue.

Moreover, Assistant Solicitors David Richardson and Patricia Parr failed to correct Epps’ false testimony during Petitioner’s trial. On direct examination, Richardson asked Epps whether he had “been offered anything special to testify here today” and whether he had “been offered any sort of special plea deal in order for [him] to testify here today” and Epps answered no to both questions. App. 116, l. 23 – 117, l. 3. On cross-examination, trial counsel also asked Epps whether he had been offered a plea deal in exchange for his testimony and Epps again said no. App. 118, ll. 13-25. Richardson and Parr both failed to correct this false testimony. The state’s failure to correct Epps’

³ Judge Russo found there was a plea agreement between the state and Epps when he granted Petitioner’s co-defendant Montarrío Graham relief at PCR in November 2012. See App. 270-278.

false testimony likewise violated Petitioner's due process rights pursuant to Napue. Because of this due process violation, Petitioner's conviction and sentence should be reversed.

Not only was the state's failure to disclose its plea agreement with Epps a violation of Petitioner's due process rights pursuant to Napue, it also constituted a Brady violation under Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). "An individual asserting a *Brady* violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching." Riddle, 369 S.C. at 44, 631 S.E.2d at 73 (citing Kyles v. Whitley, 514 U.S. 419 (1995)). "If a *Brady* violation is found to have occurred, PCR must be granted." Id. (citing Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999)).

"The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching." Id. "Evidence is material under *Brady* if there is a 'reasonable probability' that the result of the proceeding would have been different had the information been disclosed." Id. (citing State v. Proctor, 358 S.C. 424, 595 S.E.2d 480 (2004)). "The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.'" Id. (citing Kyles, 514 U.S. at 434).

"The overriding theme of the *Brady* cases is the emphasis the [United States] Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, the 'prudent prosecutor will resolve doubtful questions in favor of disclosure.'" Id. at 46, 631 S.E.2d at 74 (citing Kyles, 514 U.S. at 438-440 and Berger v. United States, 295 U.S. 78, 88 (1935)).

In Riddle, this Court held that when the state knowingly uses perjured testimony and fails to correct it, it violates a defendant's right to due process. See Riddle, 369 S.C. at 47, 631 S.E.2d at 75

(“The PCR judge erred in concluding that the State was not obligated to correct Jason’s false testimony, and in failing to hold that this violation of petitioner’s due process rights required that he be granted a new trial.”).

In this case, the assistant solicitors had the burden to disclose to Petitioner and her trial counsel the existence of a plea deal with Epps. The existence of the plea deal was material impeachment evidence that could have been used by trial counsel to show that Epps’ had a strong motive to fabricate his testimony. It also could have been used to show that Epps had lied under oath when he claimed he did not have a plea deal with the state in exchange for his testimony. This would have raised questions concerning Epps’s credibility and the truthfulness of his other testimony against Petitioner. Without knowledge of this plea deal, Petitioner was handicapped in her ability to properly and sufficiently cross-examination Epps. As a result, she did not receive a fair trial.

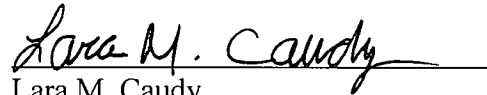
Also under Brady and Riddle, the assistant solicitors were required to correct Epps’ false testimony during the trial. Assistant Solicitor Richardson elicited the false testimony during his direct examination of Epps when he asked the leading question, “You hadn’t been offered any sort of special plea deal in order for you to testify here today; is that right?” App. 117, ll. 1-3. Not only did Richardson elicit the false testimony, he and Parr both failed to correct the false testimony when Epps repeated it on cross-examination. See App. 118, ll. 13-25.

Because of this prosecutorial misconduct, Petitioner’s conviction and sentence should be reversed and this case remanded to the Florence County Court of General Sessions for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

A handwritten signature in black ink that reads "Lara M. Caudy". The signature is written in a cursive style and is positioned above a solid horizontal line.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

LATISHA COCHRAN,

PETITIONER,

V.

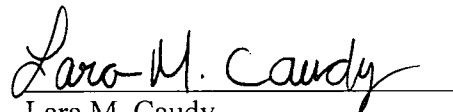
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001388

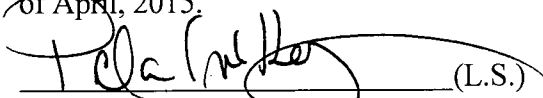
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of April, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of April, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.