

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

certiorari to Spartanburg County
Roger L. Couch, Circuit Court Judge

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DEC 30 2015

S.C. Supreme Court

SUPREME RAHEEM ACKBAR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE No. 2015-001052

PRO-SE RESPONSE FOR WRIT OF CERTIORARI

SUPREME R. ACKBAR

Petitioner

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

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ISSUES PRESENTED

Whether the PCr COURT erred in finding lack of merit inside counsell's failure to object to Respondent's failure to properly serve petitioner for the charge of murder and counsell's failure to object to and make motion to quash indictment?

STATEMENT

On September 5, 2009 the Money store in Duncan SC Spartanburg County was supposedly robbed at gun point by two (2) alien suspects. Two (2) employee witnesses were present during the alleged stick-up, "Ashely Jeter and Berdin Wilkins".

Ashely stated she notice a man with a grey hoodie and shades cock his gun while approaching the door. She said the man entered and ordered her and Berdin to get down. She further stated the second guy in black and red took the money out of the file drawer which she showed him and then he said "this aint all of it". Ashely said she then pointed to the store's cash drawers and that the guy in black and red emptied those cash drawers and then ordered them to stay down and don't look. She said the guy in the grey hoodie then eased his gun away and "walked off" and then she heard the clicking of the back door.

Berdin said that a man came in the store with mask and glasses wearing black pants and ordered her and Ashely to get on the floor and don't move and not look at him. She said another man asked Ashely "where is the money, is this all of it". Neither of the witnesses provided Respondent with any description of any vehicle or tag number that the alien suspects may or may not be driving. There are no recordings to support the claim of the money store being robbed at gun point. On September 7, 2009 Respondent alleged in their report that the witnesses described both alien suspects as black men. There is no oral testimony or additional statements or a declaration of cooperation which supports Respondent's assertion. On September 10, 2009 Respondent alleged to have received information from a alien check cashing business in Greer SC regarding a possible suspect that matched the description of their suspects. The record reveals no showing that the Greer P.D. received a report from the alien check cashing business reporting that a man with a grey hoodie and shades wearing black pants and mask or a second guy in black and red entering their mysterious check cashing business with guns or being around it. The information Respondent produced concerned vehical tag number FJC-525 which was a green in color Honda belonging to Nathaniel Everett who lived at 687 Wickham Ct. Spartanburg SC 29301. On September 11, 2009 Respondent without probable cause appeared at the address of Nathaniel Everett supposedly and never question Nathaniel Everett regarding the money store's claim of being robbed at gun point but instead spoke with Ricky Kelly Jr. Ricky Kelly Jr. supposedly voluntarily followed Respondent back to the Duncan P.D. Upon questioning Ricky Kelly Jr. stated he did not have any knowledge in relation to the alleged robbery of the

Money store but after the apparent subjection to psychological pressure Ricky Kelly Jr. admitted that he did have knowledge of the alleged armed robbery and that he participated in the robbery. Respondent is unequivocally seen abdicating the procedural safeguards of the Miranda warning and administering disturbing controversy in relation to the signatures of Ricky Kelly Jr. and Sgt. Chris K. Miller and his I.D. badge number. Petitioner asserts Ricky Kelly Jr. could not have been the suspect that matched Respondent's suspect because Ricky Kelly Jr. never admitted to entering the Money store or "walking off". On September 15, 2009 Respondent use their rubber stamp and issue a "bare bone" defective Armed Robbery warrant which is M-116206 for Petitioner's arrest. On September 20, 2009 Respondent was notified of a stabbing at 312 Irby Rd. and the victim was Ricky Kelly Jr. Respondent claim to be aware that Ricky Kelly Jr. had positively I.D. and given a statement against Petitioner. The record does not support Respondent's assertion, however it does show Respondent's fraudulent defaulted suspicion of Petitioner being the culpable party. Upon the initial questioning of Octavious Burnside, she capitulated it had been several days since she last saw petitioner but after succumbing to the hypnosis of her grandfather Freddy Davis, Octavious Burnside began to assist Respondent diligently in their Coerce aggregative scheme to expurgate the Petitioner from the lives of his children and his his society of family and friends fraudulently. On September 21, 2009 Respondent illegally seized their perverted evidence. At approx. 2:00 P.M. petitioner appeared inside the lobby of the Spartanburg Sheriff's office and was later confronted with a sample of Octavious Burnside's poisonous fruit. Thereafter Petitioner was illegally seized by Respondent and booked into the Spartanburg County Jail in violation of Petitioner's Fourth, Fifth, Eighth and Fourteenth Amendments on the defective fraudulent warrant of armed robbery (M-116206). After gathering up their poisonous fruit throughout their fraudulent defaulted investigation Respondent utilized their secondary rubber stamp and issued the defective fraudulent murder warrant M-089645 for Petitioner's arrest on September 25, 2009 to which Petitioner was never served or read Miranda rights in relation thereof. On September 26, 2009 Respondent ensconced Marcus Wright as their star witness by informing him of the poisonous fruit and despite Respondent's attempt to cover up their poisonous coercion the record does reflect their Substant Corruptant.

On November 30, 2009, a Spartanburg County grand jury indicted Petitioner for murder, indictment No. 09-65-42-5988 and Armed Robbery indictment No. 09-65-44-5944 because Respondent violated the grand jury clause by being the sole witness at the hearing(s) by and through Spartanburg County Sheriff's office, Sekerak 488 and Duncan P.O. Petitioner asserts that trial counsel was inept, not constitutional

ineffective by failing to reach, investigate and prepare a defense for a violation of the grand Jury clause. On January 27, 2011 during Petitioner's Motion to relieve counsel, Petitioner informed the trial court of the applicable dysfunction of trial counsel nevertheless the motion was denied. On February 7, 2011 Respondent stated that the trial court, along with trial counsel, would be assisting them in their fraudulent defaulted prosecution. Thereafter trial counsel submitted to Respondent's assertion by acknowledging his awareness of the "bare bones" entangle inside the affidavits of Respondent's case and that of their motivated witnesses. On February 9, 2011 trial counsel bolstered his acknowledgement by submitting Petitioner's conviction is all about abuse of process, malicious arrest, malicious prosecution and false imprisonment to which violates the exclusionary rule and Petitioner's Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments. Thank you. Petitioner asserts that Octavious Burnside's warp story was influenced by postincident conversation between Respondent and her grandfather Freddy Davis. The record is replete with the suggestion that Respondent resorted to psychological pressure to elicit the statements in both cases. Petitioner's claim of innocence is more substantive rather than procedural even though the ineffectiveness of ~~trial~~ counsel denied Petitioner the full panoply protection afforded to criminal defendants by the constitution. On the same day of February 9, 2011 the jury convicted Petitioner after twenty five (25) minutes of deliberating on the false evidence and the trial court sentence Petitioner to life imprisonment without the possibility of parole without probable cause. On September 12, 2012, the court of Appeals dismissed Petitioner's appeal in an unpublished opinion. On December 4, 2012 Petitioner file a Pet application. On September 15, 2014, a hearing was held before the Honorable Roger L. Couch. J. Brandt Rucker represented Petitioner. Suzanne White represented Respondent. On March 27, 2015, Judge Couch denied Petitioner's application. This Petition follows.

ARGUMENT

The PCR Court erred in finding lack of Merit in regards to Petitioner's claims of counsel's failure to object to Respondent's failure to properly serve Petitioner for the charge of murder and make motion to quash indictment.

Factual Background

On September 15, 2009 a defective "bare bone" Warrant was issued for Petitioner arrest for Armed Robbery App. 411, 1. On the afternoon of September 20, 2009 Ricky Kelly Jr. died from stab wounds to his chest, head and throat which was caused by a large fixed blade hunting knife according to Respondent via indictment "however Respondent's testimony is inconsistent with the language charged inside indictment No. 09-65-42-5943" App. 203, 1. 9-14. On September 21, 2009 Petitioner was illegally detained by Respondent App. 421, 1. Paragraph 14. On September 25, 2009 via News Channel 7 Petitioner was charged with murdering Ricky Kelly Jr. with a "large fixed blade hunting knife" based upon the belief of "bare bones". A plain and obvious direct review of Respondent's exhibits reveals Respondent's failure to produce their referenced evidence as well as the variance that surprised Petitioner at trial and hindered the preparation of Petitioner's defense and exposes Petitioner to the danger of a second prosecution for the same offense App. 5, 1. 1-25, App. 6, 1. 1-6.

The PCR Court's Ruling

The PCR Court found that trial Counsel's failure to object to Respondent's failure to properly serve Petitioner for the charge of murder and make motion to quash indictment had merit inside the features, despite Petitioner's uncontested actual innocent acquittal assertion App. 471, 1. 16-18, App. 473, 1. 7-9, App. 483, 1. 12-18 and App. 518, 1.

Discussion

The Per Court erred in finding that Petitioner's claims lacked ^{merit} because a defendant is entitled to a direct verdict when the state fails to produce the evidence of the offense charged. State v. Chisolm, (S.C. App. 2003) 355 S.C. 175, 584 S.E. 2d 401; See U.S. v. Thomas, 114 F.3d 228, 248 (D.C. Cir. 1997) (prosecutor's opening argument improper because prosecutor later failed to produce reference evidence); See Miller v. Paste, 87 S.Ct. 785 (The Supreme Court made it clear that a defendant can not be convicted of false evidence); See U.S. v. Redd, 161 F.3d 793 (4th Cir. 1998) (A variance in the indictment violates defendant's right only if it prejudices him. The prejudice occurs when the variance either surprises him at trial and hinders the preparation of his defense, or exposes him to the danger of a second prosecution for the same offense); See Jones v. Barnes, 103 S.Ct. 3308, United States v. Olano, 113 S.Ct. 1770, United States v. Timothy Dequasia, 373 F.3d 509; 2004 U.S. App. Lexis 13625 and Sehlep v. DeLo, 115 S.Ct. 851 (1995).

While criminal trials are not a game in which the participants are expected to enter the ring with near match in skill neither is it a sacrifice of an unarmed prisoner to gladiators. Petitioner asserts that had trial counsel taken Petitioner's case through an adversarial testing there's a reasonable probability that the outcome of Petitioner's trial would have been different. Likewise a reasonable probability is a probability sufficient to undermine confidence in the outcome, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)

CONCLUSION

For the foregoing reasons this court should grant certiorari with the ultimate relief of reversing petitioner's conviction and granting petitioner a new trial.

Respectfully Submitted

Supreme R. Ackbar

Supreme R. Ackbar

Petitioner

12-21-15

Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29411

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SC SUPREME COURT

Re: Supreme Rahum Ackbar v. State
Appellate Case No. 2015-001052

Dear Clerk:

Thank you ^{for} informing me of counsel's submission. Enclosed herewith is a copy of my pro se response for writ of certiorari.

Would you please notify me when the filing of the pro-se response is complete. Thank you and good day.

Sincerely
Supreme A. Ackbar

12-21-15

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