

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 10 2016

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2015-000066

THE STATE,

RESPONDENT,

Vs.

FURMAN EUGENE TAYLOR,

APPELLANT.

NOTION REQUESTING LEAVE BE GRANTED
BASED UPON AFTER DISCOVERED EVIDENCE

Appellant, proceeding pro-se, moves for
leave based upon after discovered evidence
and would show respectfully unto this
Court:

(1)

I

Appellant was convicted in Greenville County of Burglary in the first degree and Petit Larceny after a second jury trial held before the Honorable D. Garrison Hill on January 5thru 7, 2015. Appellant (herein after Taylor) was sentenced to Life imprisonment for Burglary and thirty (30) days for petit larceny. Taylor filed and served Notice of appeal. On July 01, 2015, Appellant defender, Mr. Robert M. Pachak, submitted an Orders brief, petition to be relieved and record of appeal. Taylor thereafter filed and served a pro-se designation of matter and pro-se brief. Taylor attached portions of the initial trial transcript held February 11th and 14th, 2014, before Honorable R. Knox MCMAHON, police incident and Supplemental reports, and testimony of various State witnesses that resulted in a hung jury.

The State moved to strike matters from Taylor's pro-se designation of matter and pro-se brief pursuant to Rule 209, and 210(c) respectively. Taylor objected to the States contention and designated the entire transcript of the February 11th and 14th, 2014, trial to support his position and moved to substitute Mr. Pachak because he failed to rebrief the issues or include the transcript of the hung jury.

By order dated February 04, 2016, the Court of Appeals granted the State's motion to strike certain matters from Taylor's record on appeal and any references to those matters in his pro-se brief and denied his motion to substitute counsel.

II

In reviewing the Supreme Court rules governing jurisdictional exceptions after an appeal has been perfected and docketed, it appears the order aggrieves Taylor

(3)

AS WELL AS IMPACTS THE MODE OF REVIEW AND/OR
TAYLOR'S CONSTITUTIONAL RIGHT TO BE HEARD
CAUSING HIM TO SUFFER AN INJURIOUS EFFECT IN
A LEGAL SENSE TO DUE-PROCESS AND
FUNDAMENTAL FAIRNESS IF THE STRUCK DOCUMENTS
ARE NOT CONSIDERED WITH THE WHOLE RECORD,
THEN THIS APPELLATE COURT, HAVING EXCLUSIVE
JURISDICTION OVER THE APPEAL SHOULD GRANT
TAYLOR LEAVE TO PRESENT GROUNDS WHICH HE
HAS DISCOVERED SINCE TRIAL WHICH OUGHT FIRST
BE SUBMITTED TO THE CIRCUIT JUDGE UPON A
MOTION FOR A NEW TRIAL BASED UPON AFTER-
DISCOVERED EVIDENCE. McDonald V. Palmetto
Theaters, (1941) 196 S.C. 38; 11 SE 2d. 444. THE OBJECT
OF AN EXCEPTION IS TO PRESENT SOME DISTINCT
PRINCIPLE OR QUESTION OF LAW WHICH TAYLOR
CLAIMS TO HAVE BEEN VIOLATED BY THE COURT
IN THE TRIAL OF THIS CASE FROM WHICH HIS APPEAL
IS TAKEN AND TO PRESENT IT IN SUCH FORM
THAT IT MAY BE PROPERLY REVIEWED.

Hewitt v. Reserve Life Ins. Co. (1959) 235 S.C. 201;
110 S.E.2d 852; 210 (n) S.C.A.C.R..

In the absence of any proper exception there is nothing properly before the Supreme Court for review. Adom v. County of Florence (1972) 258 S.C. 480; 189 S.E.2d 293.

Moreover, every ground of appeal ought to be so distinctly stated that the courts may at once see the point which it is called upon to decide without having to "grope in the dark" to ascertain the precise point at issue. Hewitt v. Reserve Life Ins. Co. (1959) 235 S.C. 201; 110 S.E.2d 852.

Taylor has discovered since the trial by the exercise of due diligence, material evidence of prosecutorial misconduct and fraud upon the court intrinsic to the litigation where:

1.) The Solicitor did knowingly assist/induce the trial court to admit David Perry's testimony without correcting the fact that initially he told both Officer Frank Abella and Investigator Brady Mashak that he did not see a male

• Suspect at the crime scene or that both Officers gave sworn testimony in open court to this fact at the first trial without a bigger hearing.

(2) The Solicitor and Investigator Mashak did knowingly incite, promote and/or encourage Tandy Perry to give a false statement and/or testimony where Officer Frank Abella's report indicates a completely different description than what he testified to at both trials and his written statement after making contact with Investigator Brady Mashak.

3.) The Solicitor did knowingly engage in conduct involving deceit and misrepresentation by eliciting known false testimony from David Perry in changing his testimony to having seen a male suspect to add weight and credibility to his brother's changed description, as well as Amanda Caldwell's believability.

4.) The Solicitor did knowingly engage in conduct involving deceit, corruption, and misrepresentation by eliciting known false testimony from
(6)

Investigator Brady Mashak when asking if, "David Perry and Tandy Perry make a positive identification from the photo line up", that at the first trial Inv. Mashak had testified that David Perry had never been shown the photo line up because he had said he never seen a male suspect (First trial transcript page 125, Lines 12 thru 15) that Tandy did, but at the second trial testified that both had been shown the photo line ups to see if they could identify Taylor and Amanda Caldwell. (Second trial transcript page 218, Lines 14 thru 20).

5) The Solicitor did knowingly engage in conduct that misrepresented the color of the van to be that of Taylor's when DMV records indicates that Taylor's van was a single color of white.

6) The Solicitor did knowingly engage in conduct prejudicial and to pollute the administration of justice by claiming to have no knowledge of the first trial when records demonstrates that he has been with the Solicitor's office even before Taylor was tried the first time which establishes

(7)

dishonesty, deceit, and untrustworthiness while in office and/or during the performance of his official duties.

7.) The solicitor did knowingly commit a criminal act that reflects adversely on his trustworthiness as a prosecutor because there exist a genuine question of the authenticity of the pawnshop video that may have been susceptible to editorial distortion when both documentation and testimony proves Investigator Mashak copied the video after holding it for approximately (2) two weeks before turning it into property and evidence and initiating the chain of custody causing prejudicial police negligence that conflicts with what Inv. Mashak testified to during trial purporting that the video specifically contained: "from the time Amanda Caldwell entered the pawnshop until she exits..."

Which was not played as such to the jury at trial.

8.) The solicitor did knowingly assist/induce The Honorable D. Garrison Hill in conduct that violates the integrity and independence of the judiciary where the lending of judicial status

and office to advance the State's interest that was swayed by improper influences of police and witnesses testimony, fraud intrinsic to this case and misrepresentation of facts not supported by the record to achieve a conviction of Taylor by means that violate the Rules of Professional Conduct, due-process and fundamental fairness.

Moreover, while the Supreme Court accords great weight to the trial judge's assurances of his own impartiality, a trial judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. Wise v. Broadway, 433 SE2d 857 (sc. 1993)

III

Appellant Counsel, Mr. Robert M. Pachak (esq.), abandoned for appeal claims that:

1) The trial judge erred in denying defenses motion that the video be excluded because it did not contain what it was purported to include and/or the admissibility or the genuineness /authenticity of the duplicated pawnshop

Video and it being unfair to Taylor in lieu of the original pursuant to S.C.R. of evid. 1003.

2.) The impermissibly suggestive in court / out of court identification of Taylor without an admissibility hearing pursuant to Rule 401-404 S.C.R. of evid.

3.) The lack of proof of every element of S.C. code Ann. § 16-11-31(a)(2) without a admissibility hearing pursuant to Rule 401, 402, 403, 404, and 609 respectively of S.C.R. of evid.

4.) The constitutionality of the Statutes legislative intent to deter repeat offenses.

5.) The inconsistent testimony of several State's witnesses to include but not limited to Amanda Caldwell, Investigator Brady Mashak, David Perry, and Tandy Perry which is material in establishing prosecutorial misconduct in office, powerful impeachment evidence, intrinsic fraud, misrepresentations and criminal activity that undermines the confidence in the conviction and soundness of the adversarial system, as well as the fundamental fairness in this case.

In arguing Taylor's case, Pachak little
(10)

More than quoted from the numerous pages of the trial transcript regarding various arguments raised before the trial judge surrounding the Matter. State v. Hill, (scapp. 2011) 394 S.C. 280; 715 SE 2d 368

IV

Transcripts of record is a source of Supreme Court information as to what occurred in the trial it's very object being to inform the court authoritatively of legal questions contested and of facts pertinent thereto. S. Hwy. Dept. v. Meredith, (1962) 241 S.C. 306; 128 SE 2d 179. By its own order, the Court of Appeals is unable to review on appeal issues aforementioned because it discerned from the record that Taylor's issues was not raised in the trial court. Nevertheless, the discovered facts since the perfection of Taylor's appeal raises questions in respect to a point based on alleged facts not shown in the transcript of record or not shown by such record to be true and that such evidence is not irrelevant or incompetent.

Hence, failure of this court to grant Taylor leave so that he may have these claims properly

reviewed would amount to a fundamental miscarriage of justice at every stage through out the State's adversarial process and establishes cause and prejudicial factual basis entitling Taylor to Habeas relief.

V

Wherefore, Taylor respectfully moves for leave of this court by order so that he may present grounds he has discovered since trial which ought first be submitted to the circuit judge upon a motion for a New Trial based upon After-discovered evidence be granted.

Furthermore, Taylor objects to the finality of the order to strike portions of the transcript and designation of matter and pro-se brief references and moves to have the order set-aside based upon After-discovered evidence and voidness provisions.

Respectfully Submitted,

Furman Taylor / pro-se litigant.

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Furman E. Taylor; ID# 198161
Perry Corr. Inst. 103A-206
430 Oaklawn Road
Pelzer, S.C. 29669

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SC Court of Appeals

March 02, 2016

In Re: Appellate Case No. 2015-000066

Dear Ms. Kitchings

I am writing in concern of the above referenced matter.

Please find enclosed my motion requesting leave be granted based upon after-discovered evidence that I am requesting to be filed in this case. I have also served a copy on opposing counsel.

Furthermore, I would like to Thank YOU in advance for all of your time, help, and consideration in these legal endeavors on my behalf.

Sincerely,


Furman E. Taylor; ID# 198161
Perry Corr. Inst. / D3A-206
430 Oaklawn Road
Pelzer, S.C. 29669

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P.C.I. MAILROOM

LEGAL MAIL

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