

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Greenwood County
Edward W. Miller, Circuit Court

JUL 06 2016

SC Court of Appeals

THE STATE,

RESPONDENT

V.

JAMAL HAKEEM,

APPELLANT

APPELLATE CASE NO. 2015-001542

ANDERS PRO-SE BRIEF OF
APPELLANT

JAMAL HAKEEM

Appellate Defender
Lee Correctional Institution
990 Wasacky HWY, Bishopville,
S.C. 29010

TABLE OF AUTHORITIES

Case

Washington v. Texas

388 U.S. 14, 23, 87 S. Ct. 1920, 1925, 18 L.

2d. 1014 (1967).

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress photos of clothing and Cigarettes found pursuant to Coerced Consent to search Appellant's home given by Appellant's wife?

In June of 2015, the Greenwood County Grand Jury indicted Appellant Hakeem for armed robbery and possession of a firearm during the Commission of a violent Crime indictment # 15-GS-24-855-856. On July 13, 2015, Appellant at trial.

C. Yates Brown and Wade Downin prosecuted the case. The jury returned verdicts of guilty. Judge Miller sentenced Appellant to twenty five years for armed robbery and five (5) years for the weapon charge.

A timely notice of intent to appeal was served on July 15, 2015. This Pro-se Appeal follows.

ARGUMENT

The trial judge erred in refusing to suppress photos of clothing and Cigarettes found pursuant to a Coerced Consent to search Appellant's home given by Appellant's wife.

On April 11, 2013 an individual robbed the shell station in Greenwood. The Clerk working at the Shell Station at the time of the Robbery, Shkuntula "shea" Smith, testified that the robber took a beer from the back cooler, placed it on the counter and asked for three packs of Newports Cigarettes. (R. p. 104, line 20- p. 105, lines 1-24). Smith testified that she turned to get the Cigarettes and asked for a date of birth of November 26th. R. p. 105, lines 8-9. The Clerk testified that when she turned around the individual pointed a gun at her and asked for all of the money from the register. (R. p. 105, lines 11-20). Both the video surveillance and a copy of the 911 call placed by the Clerk after the robbery were introduced in evidence.

Whitfield Brooks with the Greenwood County Sheriff's office testified that when he arrived at the Shell Station pursuant to a 911 Call from the clerk, the Clerk handed him a printed receipt where she had entered the full date of birth, including the year, given by the robber. (R. p. 134, lines 1-6). A database search of names with the date given by the robber produced Appellant's name.

(R. p. 135, lines 18-24). As a result, Appellant's photograph was placed in a photo line up and shown to the clerk.

(R. pp. 136-137). The Clerk identified Appellant as the robber. After the Clerk identified Appellant, members of the Greenwood Sheriff's Office went to Appellant's house where they spoke with his wife, Bird Hakeem. (R. p. 140, lines 1-25) Mrs. Hakeem testified that officers surrounded the house with Guns drawn. (R. p. 53, line 1-p. 54, lines 1-25). The Appellant was not at home when the officers arrived but his wife called him and asked him to come home. R. p. 141, lines 1-6). When Appellant voluntarily returned home in his truck, he was arrested. R. p. 142, lines 15-24).

Officers photographed a pack of Newport Cigarettes in the Center Console of Appellant's truck. (R. p. 143, lines 19-25). After Appellant's arrest, officers returned to the Hakeem house, officers were still on the property the officer's were doing a sweep of the house searching, it is unclear if in fact a warrant was presented at this time. The Consent to search was introduced, over objection, [as] as State's Exhibit #1, C.R. p. 123, line 1-p. 124 lines 1-4). Pursuant to the Consent to search, officers found a hooded plaid sweatshirt, consistent with what the robber was allegedly wearing, with two packs of Newports in the pocket, a pair of jeans and a white T-shirt. (R. p. 147, line 20-p. 148, 149, lines 1-24). Trial Counsel objected to the photos of the items, State's Exhibits # 21 through # 24, C.R. p. 149, lines 16-19) and object to state's Exhibit # 25, the blue jeans, (R. p. 150, lines 2-8) but told the trial judge that state's Exhibit # 26 the hooded plaid sweatshirt, was without objection. (R. p. 151, lines 5-9).

Mrs. Hakeem testified:

Mr. Russ didn't get me to sign. Mr. Strickland got me to sign. He was sitting on the -- Couch beside me. (R.p. 59, 6-13).

And you're confident it was Mr. Strickland? It was Mr. Strickland. Because he broke the ice with me because I couldn't half concentrate. He broke the ice with me about talking about his children go to the same school I work at. Officer Strickland is the only one who could satisfy the Consent to search. Officer Strickland was not present in the Court room. Officer Strickland is the sole witness to the Consent to search. The State had the burden that could only be met by officer Strickland, and appellant had the [right] right to cross examine him.

This is a six Amendment Confrontation violation. Appellant must be given the right to cross examine officer Strickland, because it was officer Strickland who got Mrs. Hakeem to sign the Consent to search. Appellant must be afforded his right of Confrontation granted by the Six Amendment to the the United States Constitution, and thus, a

Meaningful opportunity to present a Complete Defense. See *Washington v. Texas*, 388 U.S. 14, 23, 87 S.Ct. 1920, 1925, 18 L. 2d. 1019 (1967). He must be given the opportunity to cross-examine the party who got Ms. Hakeem to sign the Consent to search.

The trial judge denied the motion to suppress stating:

You can get the material at lunch if you want to, but I'm going to find that in the totality of the circumstances that Ms. Hakeem lives there. She has custody of the house. She has testified she gave free and voluntary Consent. I don't find from the totality of the circumstances that this search should—any of the fruits from the search should be suppressed.

Appellant simply disagrees. The court did not take into consideration the fact that Ms. Hakeem's will was overborn. Ms. Hakeem testified:

I was opening door -- opening the door and when I saw all of these officers with rifles and they were pointed towards the house, and when I pulled the door open it was like-- he wasn't close up to me but it was like

in my face. And I almost like dropped.

(R. p. 52, lines 14-18. Over and over again Ms. Hakeem expressed her state of mind at the time, officer Strickland took this opportunity to Coerce Ms. Hakeem into signing the consent to search. The question still remains "who got Ms. Hakeem to sign the consent to search." Clearly Ms. Hakeem's will was overborn.

To determine whether consent was given voluntarily, Courts examine the totality of the circumstances surrounding the consent. Factors that weigh on Court's determination of voluntariness include: 1. Knowledge of the Constitution right to refuse consent, (2) age, intelligence, education, and language ability; (3) the degree to which the individual cooperates with the police; (4) the individual's attitude about the likelihood of the discovery of contraband; and (5) the length of detention and the nature of questioning, including the use of physical punishment or other coercive police behavior. The Court simply did not weigh the totality of the circumstances in this case.

CONCLUSION

Ms. Bird Hakeem presents this affidavit
on behalf of (Applicant) Mr. Hakeem, Jamal.
Please See Attachment.

Based on the above argument, Applicant's
Conviction and sentences should be reversed
and ~~or~~ remanded for a new trial.

JAMAL HAKEEM #364712
Lee C.F. 990 Wisacky Hwy
Bishopville SC 29010

I called Jamal on phone. He came home. They arrested him. A little while later that evening. I received a call. It was det. Strickland. He wanted to ask more questions. When he showed up there was 3 or 4 officers with him. He said he didn't have a warrant. He wanted to search anyway. He said if the officer go back to get a warrant. They would rough up my belongings. Because they had him (dead to right). I gave my consent, I was told what ever was taken I would see it, I never saw what they took. But in that brown bag.

613 Salak Rd
Greenwood sc

Bird Hakeem

Signature

STATE OF MISSISSIPPI
COUNTY OF WASHINGTON

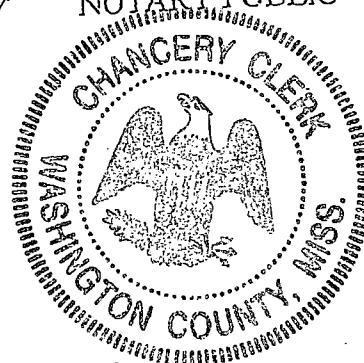
PERSONALLY appeared before me, the undersigned M. A. Taylor

in and for said county and state the named Bird Hakeem

who acknowledged that they signed and delivered the foregoing instrument of the day and year therein mentioned for the purposes therein set forth.

GIVEN UNDER my hand and official seal, this 22nd day of June 2016.

Marilyn Hansell Chancy det
By F. J. [unclear] DC
NOTARY PUBLIC



COMMISSION EXPIRES:

My Commission Expires January 1, 2020

613 salak Rd
Greenwood MS

I Bird Hakeem declare all statements to be true

In the trial of Jamal Hakeem 7-13-14 #2015

I was denied that opportunity to ask questions.

Under Judge Miller

The question was where is the detective that spearheaded the case?

He wasn't there.

1st of all, all of this chaos started when I opened my front door.

There were guns and rifles drawn everywhere. My nerves were shot at this point. I came out. They searched the house.

Bird Hakeem

Signature

STATE OF MISSISSIPPI
COUNTY OF WASHINGTON

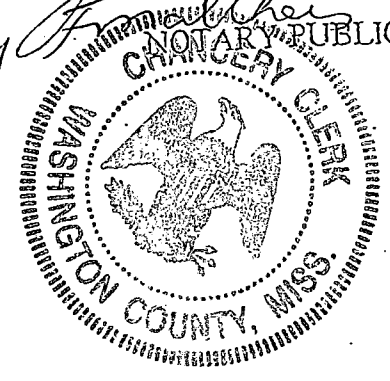
PERSONALLY appeared before me, the undersigned Nelany

in and for said county and state the named Bird Hakeem

who acknowledged that they signed and delivered the foregoing instrument of the day and year therein mentioned for the purposes therein set forth.

GIVEN UNDER my hand and official seal, this 22nd day of June 2016.

Mary Hansell Chaney Clerk
By Franchesca D.C.
NOTARY PUBLIC



COMMISSION EXPIRES:

My Commission Expires January 1, 2020

28

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 06 2016

SC Court of Appeals

Appeal from Greenwood County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

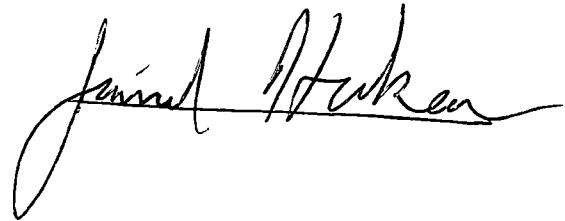
JAMAL HAKEEM,

Appellant

Appellate Case NO. 2015-001542

Certificate of Service

The undersign appellant hereby certifies that a true copy of the Pro-se Brief of appellant and designation matter in the above referenced case has been served 519, Columbia, S.C. 29201; and a copy of the Anders Brief of Appellant and designation of Matter and Record on Appeal



JAMAL HAKEEM # 364712 F1B2251
Lee Correctional Inst.
990 Wisacky Hwy.
Bishopville SC, 29010

RECEIVED

JUL 06 2016

SC Court of Appeals

South CAROLINA COURT APPEALS
Jenny ABOUT KITCHINGS CLERK
Post Box 11629
COLUMBIA S.C. 29211

LEGAL MAIL