

STATE OF SOUTH CAROLINA
IN the Court of Appeals

Appeal From Greenville County
CASE 2002-65-23-1063

Edward W. Miller Judge

RECEIVED

AUG 15 2016

SC Court of Appeals

Robert Max Watkins

Appellant

v

THE STATE

RESPONDENT

Initial Brief of Appellant

CASE 2016-000966

Counsel for Appellant

Pro-se Robert Max Watkins 243863 @ 2A118

Perry Correctional Institution

430 Oaklawn Rd, Pelzer SC, 29669

Alan Wilson

Attorney General

Assistant Attorney General

Office of Attorney General

P.O. Box 11549

Columbia SC, 29211

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all exhibit's except for Exhibit A attached, are and should be a part of this Courts Record, that were included in Appellants Case 2002-6523-1063 Independent Motion For a New trial, pursuant to §17-23-110, Brady v Maryland 373 U.S. 83 (1963) and SCRCrim P. Rule 29(b) after or Newly discovered Evidence, provided to this Court, from the lower court office at the clerk of Court of General Session Court Greenville County. So this Court should have already in its possession the referred to exhibits 1 through 17 as a part of the record of Appeal of Appellats Case 2016-000966, referred to in this initial Brief of Appellant:

STATEMENT OF ISSUES ON APPEAL

1. The presiding Judge Edward W. Miller abused his discretion in denying Appellant's Independent Motion for a new trial pursuant to Brady v Maryland, 373 U.S. 83 (1963)
2. The presiding Judge Edward W. Miller abused his discretion in his order denying Appellant's Independent Motion for a New trial on grounds He did not sufficiently meet the test for new trial based upon after discovered evidence. see copy of order attached as Exhibit "A"

STATEMENT OF THE CASE

Appellant was convicted of armed Robbery and possession of a weapon after a jury trial before the Honorable Victor C. Pyle, Jr. on October 23-25-2002. in Greenville County. He was sentenced to thirty years for armed Robbery and five years for possession of a weapon. Appellant appealed his conviction and it was dismissed by the S.C. Court of Appeals pursuant to Anders v California, 386 U.S. 73 (1967). See State v. Watkins, Op. NO. 2004-UP-406 (Filed June 22, 2004). Appellant Filed an application for post conviction relief on October 22, 2004 and a hearing was held April 8, 2005, before the Honorable Harry R. Patterson. On January 17th 2006, Judge Patterson issued an order denying and dismissing the application for post conviction relief case 2004-CP-23-7064. Appellant Filed a petition for writ of Certiorari with the S.C. Supreme Court. The S.C. Supreme Court, reversed Judge Patterson order. See Watkins v. State, Op. No. 2008-MO-001 (Filed January 14, 2008). The case was remanded for a New trial, and after several pre-trial Motion hearing, the case was retried before Judge Patterson on September 22-24, 2008. The Jury Found appellant guilty and the trial Court sentenced him to 25 years for armed Robbery and 5 years to run consecutive for Possession of a weapon during the commission of or attempt to commit a violent crime. Appellant appealed to the South Carolina Court of Appeals, which reversed his conviction and remand for a New trial. See State v. Watkins, Op. No. 2011-UP-091 (S.C. Ct App. Filed March 8, 2011). The state Filed a petition for a rehearing on March 21, 2011, S.C. Court of Appeals issued on April 21, 2011 and order denying the states petition for a rehearing. The state had 30 days to file a petition for writ of Certiorari pursuant to SCACR 242 (c) or the remittitur would be sent pursuant to SCACR 221 (b). The state failed to file in a timely manner, as required by SCACR 242 (c) a Petition for a writ of Certiorari with the S.C. Court of Appeal. Therefore pursuant to SCACR 221(b) the S.C. court of appeals on June 2nd 2011, sent the remittitur and a

copy of its judgment of reversal of Appellants Conviction down to the lower trial court. On June 14, 2011 Appellant was released from the custody of SCDC back into the custody of Greenville County, for a New trial. On June 15, 2011 the state filed an expedited Motion to recall the remittitur with the S.C. Court of Appeals. Counsel for Appellant, SCCAD Division of Appellate defense failed to file a return to the state expedited Motion to recall the remittitur, pursuant to SCACR 240(e). The SC Court of Appeals deemed that SCCAD Division of Appellate Defense Counsel consented to the recalling of the remittitur by the state pursuant to SCCAD Division of Appellate defense failure to file a return pursuant to SCACR 240(e). The states expedited Motion to recall the remittitur. On June 30, 2011, The S.C. Court of Appeals issued an order recalling the remittitur. On July 14, 2011 the state filed a Petition for a Writ of Certiorari. The S.C. Supreme Court granted the state Petition for a Writ of Certiorari, and oral argument held, and S.C. Supreme Court reversed the unpublished Opinion 2011-UP-091 of S.C. Court of Appeals reversal of Appellants September 24, 2008 Conviction under Criminal Case 2002-65-23-1063 in its Opinion No. 27334 Heard October 16, 2013, Filed December 4, 2013. Appellant then filed an application for post conviction relief, case 2014-CP-23-00589, and Evidentiary hearing was held on April 22, 2015 before Honorable Judge Edward W. Miller of the 13th Judicial Circuit Court of Common Pleas Greenville County. On April 27, 2015 Appellant received pursuant to his S.C. P.O. J.A. Request, at Perry Correctional Institution mail room window, a copy of Case 2014-95052 Greenville Police incident dispatch Detail Report from the Greenville Police department, "Afforor Newly discovered evidence of a Brady violation". Based on this favorable, impeachment evidence that is material in his case, that was not disclosed to Appellant so it could be used by him in his defense against the states case against him, as required

Pursuant to SCR Crim P. Rule 5 and Brady v Maryland, 373 U.S. 83 (1963)
On October 7, 2015 Appellant filed an independent Motion for a
New trial, pursuant to 17-23-110 Brady v Maryland, 373 U.S. 83 (1963) and
SCR Crim P. Rule 29(b) after newly discovered evidence. The State made
its response to Appellant's Motion for a New trial pursuant to newly
discovered evidence on January 19, 2016. Appellant made his return
to the state's response. On April 26, 2016 Judge Edward W. Miller
issued an order Denying Appellant's Motion for a New trial
Id as Exhibit # A attached/enclosed

The appellant filed on Appeal. Appellate Case 2016-000960.

The Appeal is as follows:

STATEMENT OF THE FACTS

After the S.C. Supreme Court in its Memorandum Opinion 2008-mo-001 Reversed Judge Larry R. Patterson's order denying Appellant's relief under PCR Civil Case # 2004-CF-23-7064, Criminal Case 2002-GS-23-1063 which were initiated based on evidence under case 01-95052 AW # 8865977 Armed Robbery and 6E65988 Punishment. Greenville County sought to retry the case 2002-GS-23-1063 again. Seeking to prosecute appellant were assistant Solicitor Lucas Marchant of the 13th Judicial Circuit Solicitor's office of Greenville County. Representing Appellant was court appointed counsel, Stephen John Henry. On May 19th, 2008, The Solicitor's office of Greenville assistant Solicitor Lucas Marchant disclosed to Appellant and his counsel, The Prosecutions disclosure of its discoverable material pursuant to section P. Rule 5: upon reviewing of the discoverable material, Questions aroused concerning the investigatory stop, warrantless search of a vehicle and seizure of U.S. currency from it that Appellant was driving, as well as a warrantless arrest and seizure of U.S. currency from Appellant's possession. Also questions and concerns as to whether law enforcement officers involved in the case knowingly included false information and facts in their reports to establish probable cause. Appellant had some concerns as well as counsel as to the timing of the events that took place prior to and after

The allegedly armed Robbery suppose to had taken place, and what information and facts the law enforcement officers had prior to and after the stopping of a BMW (Appellant) in a white Ford focus; in order to determine whether or not the terry stop was valid and the warrantless search of the vehicle driven by Appellant and the seizure of U.S. currency from the vehicle, as well as the warrantless arrest and seizure of U.S. currency from Appellant's possession. This is way Appellant Counsel on his behalf, filed a Brady Request on June 16th 2008 requesting pursuant to Brady, Copies of all radio and/or dispatch transmissions in his case. Id as Exhibit #4 3 pages Appellant case #2002-6523-1063 Independent Motion for a New trial pursuant to 17-23-110, Brady v Maryland, 378 U.S. 83 (1963) and SCRCrimP. Rule 29(b) after or Newly discovered Evidence; Because the Prosecution

failed to disclose the Greenville Police incident dispatch Detail report, Id as Exhibit #1 7 pages in Appellant's Independent Motion for a New trial On May 19, 2008 the prosecution failed to disclose the Greenville Police incident dispatch Detail Report see Id as Exhibit #2 2 pages in Appellant's case #2002-6523-1063 Independent Motion for a New trial, pursuant to 17-23-110) The prosecution

never disclosed the Greenville Police incident dispatch detail report of case #01-23082 since trial on September 22-24, 2008. Appellant didn't receive this favorable evidence until 2015 from the Greenville

Police Department. Too late to use at his September 22-24 2008
Jury trial.

Exhibit # 1. The Greenville Police Incident dispatch Detail Report
contains facts and evidence involving the timing officer received
information and what officers were on the scene at what time,
and what information they had concerning the events in question?

The prosecution at trial introduced into evidence through its own state
witness Elena Dorona Petzer, the timing in which the white Ford Taurus
was stopped, driven by a B/M "Appellant's" by the City of Greenville
Police department which was at 1:10 am see Id in Appellants
Independent Motion for a New trial etc. Exhibit # 14 page 366
line 23 - page 367 line 1.

Exhibit # 1 The undisclosed Greenville Police incident dispatch Detail
Report contains the following favorable, impeachment, and material
evidence; that officer John Thompson unit 212 or F8 star 303
could not have been the officer that stopped appellant, B/M
in the white Ford Taurus; because, He did not arrive on the scene
until 1:26:34 am. Exhibit 14 contains favorable evidence that
officer Jones unit 208 (H8) star 378 arrived on the scene at
0:16:40 am, in time to have made the stopping of the
white Ford Taurus driven by B/M; in which would support
the evidence in Forensic officer. S.C Pratt, Crime Scene
investigation Report, that officer Jones star 378 stopped the

white Ford Taurus as it attempted to exit parkwaywood Apts
Complex onto 245 Longacre Rd. see Id as Exhibit # 16
of Appellant's Independent Motion for a New trial etc.

The timing in Exhibit # 1, was not disclosed to Appellant,
in which he could have impeached the testimony introduced
into evidence through state witness officer John Thompson,
when he testified before the jury and introduced evidence
in attempt to support a reasonable suspicion for a Terry
stop and probable cause for a warrantless arrest and warrantless
search of the white Ford Taurus, that resulted in the seizing of
U.S. currency and issuance of a search warrant to obtain
more evidence to use against Appellant to convict him Id in Exhibit # 7
now see Id as Exhibit # 5 page 272-295 of Appellant's

Independent Motion for a New trial etc., his testimony
as being the officer that stopped the Appellant in the white Ford Taurus
is false, and perjury testimony under oath. Appellant would have
used the undisclosed Greenville Police incident dispatch Detail
Report evidence it contains, to challenge the investigatory stop.
Because if the investigatory stop is unlawful, all evidence obtained
as a result of that unlawful investigatory stop is fruits of a
poisonous tree. Absent the unlawful investigatory stop, there is no
warrantless arrest and seizure of U.S. currency, no warrantless
search and seizure of the white Ford Taurus or seizure of U.S.
currency from the vehicle, no interview or interrogation of
Appellant and co-defendant Elene Pelzer, all evidence used to
convict Appellant is a result of this investigatory stop.

In which the prosecution suppressed, fail to disclose or concealed favorable evidence, that would provide Appellant with substance in which to challenge the investigatory stop as being unlawful without reasonable suspicion to conduct a Terry stop. The favorable evidence concealed or suppressed in Exhibit # 1: Greenville Police incident dispatch Detail Report. —

→ Officer Jones unit #8, star 376, received information at 1:07:35 am Armed Robbery just occurred by B/M 5'10 Blue Coat Slim Pistol to head to employees, Mask on face. at 1:07:40 am he was on scene. at 1:10 He stopped the white Ford Taurus as it exited park haywood Apts into 245 Congaree Rd. Id in Exhibit # (4)(6) of Appellant's independent motion for a new trial.

Without disclosure of Exhibit # 1 Appellant was prejudiced of a defense in challenging the investigatory stop. The only information officer Jones had available to him upon stopping the white Ford Taurus Driven by Appellant a B/M, was An Armed Robbery had just occurred by a B/M. 5'10 Blue Coat Slim, Pistol to head to employee, mask on face. Information about, "Left on Foot possibly Ford Apts in Back, white Taurus left in the parking lot. white Taurus seen several times earlier in the week in parking lot." comments: came out over dispatch at 1:21:13 am

after B/m in white Ford Taurus had already been stopped
at 12:10 am. Facts show Appellant was stopped in white
Ford Taurus, because he was a B/m.

Argument

I Presiding Judge Edward W. Miller abused his discretion in denying Appellants Independent Motion for a New trial pursuant to Brady v Maryland, 373 U.S. 83 (1963).

Appellant contends that presiding judge Edward W Miller abused his discretion in denying his independent motion for a New trial pursuant to § 17-23-110, Brady v Maryland, 373 U.S. 83 (1963), where he through counsel specifically requested on June 10th, 2008 copies of all radio and/or dispatch transmissions in his case. Id as Exhibit # 4: 3 pages in Motion for a New trial after reviewed the Prosecution disclosure of its discoverable material, disclosed to Counsel and appellant on May 19, 2008, and noticing no such exculpatory evidence was disclosed to Appellant in which to determine whether the evidence provided in officers supplemental reports was correct and truthful in reference to the investigatory stop, leading to the warrantless search and seizure and invasion of Appellants privacy in the search of his vehicle and seizure of his U.S. currency as evidence without probable cause, as well as resulting in a warrantless arrest of his persons and seizure of U.S. currency from his persons, without probable cause. The prosecution did not responded to the Appellants request for disclosure of copies of all radio and/or dispatch

transmission in Appellants case. Appellant through counsel during a Pre-trial Motion Evidentiary hearing was unable to challenge the investigatory stop, and warrantless search of his vehicle and warrantless arrest on grounds of lack of probable cause violation of his 4th Amendment Rights of the United States Constitution, and therefore was precluded from seeking to exclude all evidence seized that was introduced into evidence against him as a result of the illegality pursuant to Hutton v State 654 S.E.2d. 846, that were seized as a result of the illegal investigatory stop, a warrantless search and seizure and invasion of his privacy. Search of his vehicle and warrantless arrest, seizure of U.S. currency as a result thereof. In which absent the undisclosed evidence Id is exhibit # 4, 7 pages in Appellants Motion for a New trial. The prosecution introduced into evidence from state witness officer John Thompson evidence of reasonable suspicion as to why he stopped the Appellant in a white Ford Taurus. see Id in Appellants Independent Motion for a New trial Exhibit # 5 Trial transcript page 275 line 16-19; page 276 line 1-278 line 8 Appellant was aware that evidence existed that contradicted this evidence that was disclosed by the prosecution, in which Forensic officer S.C. Pratt, in his Crime Scene Investigation Report, contains evidence that officer D.E. Jones unit 208 Star 378 was the officer that stopped the white Ford Taurus driven by Appellant, as it attempted to exit park hawwood apartment complex onto 245 Congaree Rd. see Id in Appellants independent Motion for a New trial. as exhibit # 16. But had no other evidence to corroborate, this evidence, that could be used to impeach officer Dan Fuller testimony.

in which he testified to, in establishing probable cause to support the investigatory stop of Appellant; furthermore the prosecution did not subpoena or call S.C. Pratt as a state witness, to suppress Appellant's access to this evidence being presented before the jury; and absent the undisclosed Greenville Police incident dispatch Detail Report, neither counsel or Appellant had reason to challenge the investigatory stop, and whether or not the state's evidence introduced through John Thompson was truthful and credible. As a result of the investigatory stop, and what officer John Thompson Supplemental Report stated, and in which he testified to under oath, that resulted in the investigatory stop and warrantless arrest and warrantless search of Appellant's vehicle and seizure of U.S. currency as evidence of a crime and property belonging to Chuel-e-cheese. The prosecution obtained a search warrant, based on the information and evidence obtained as a result of an illegal investigatory stop, and warrantless search and seizure of Appellant's vehicle and warrantless arrest and seizure of U.S. currency from Appellant's persons - see Id in Appellant's independent motion for a new trial Id as exhibit # 7 4 page. illegal information used to obtain the search warrant.

• During investigatory stop he and the roommate were both attempting to conceal from officers view, large amounts of loose cash in denominations consistent with the robbery.
This information came from officer John Thompson, see Id in Appellant's independent motion for a new trial, Id as exhibit # 5 page 276 line 11 - page 278 line 6.

Inference to the investigatory stop, officer John Thompson seized U.S. currency from Appellant's vehicle, and inference to the warrantless

arrest he seized U.S. currency from Appellants pocket. In reference to the search warrant issued, U.S. currency and a Gun and Mask was seized from Appellants residence, which was introduced into evidence before the jury which lead to his conviction on September 24 2008. That was introduced into evidence by the prosecution as states exhibit # 21, 22A, 22B, 23A, 23B. Id in Appellants Motion for a New trial, exhibit # 6 page 393 line 4-19, page 394 line 1-395 line 12; page 395 line 19-396 line 2. also other evidence seized from Appellants residence was introduced into evidence, such as states exhibit 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. see Id in Appellants motion for a New trial Exhibit # 8 page 397 line 13.

Appellant had no evidence as to what time the animal Pubby at Chuck & Cheese was reported, and what information was convey to the city of Greenville Police department and what information the officers received prior to them making the investigatory stop, as oppose to what officers were on the scene at that time to have stopped him in the white Ford Taurus, in order to determine whether or not the officers had reasonable suspicion to conduct an investigatory stop, and what officer actually stopped the white Ford Taurus, and at what time? through the undisclosed Greenville Police incident dispatch Detail Report contains.

Appellant by the exercise of due diligence pursuant to Brady v Maryland, 373 U.S. 83 (1963) on June 10, 2008 requested this information. Id in Appellants Motion for a New trial Exhibit # 2 3 page # 28.

The prosecution failed to disclose this evidence, before it tried and convicted Appellant on Sept 22-24th 2008 Before a jury: see Id in Appellants Motion for a New Trial Exhibit # 17 2 page Affidavit 2002GS83-1063.

It wasn't until 2015 that, pursuant to SC FOIA, that the police Department of the city of Greenville, disclosed to Appellate, The undisclosed Greenville Police incident dispatch Detail Report, see Id in Appellants Motion for a New Trial Exhibit # 1.

Argument present before the lower Court.

See Id in entire Case 2002GS-23-1063 Independent Motion for a New trial pursuant to § 17-23-110 Brady v Maryland 373 U.S. 83 (1963) and SC Crim P. Rule 29(b) of later newly discovered evidence:

Did Presiding Judge abuse his discretion in only ruling on this Motion pursuant to SC Crim P. Rule 29(b)?

Because a Brady violation is also asserted, Appellant asks this court based on the record before it to consider whether or not the Presiding Judge abused his discretion according to law in not also analysing the facts and evidence that supports a Brady violation, in which would entitle Appellant to a New trial pursuant to Brady v Maryland, 373 U.S. 83 (1963):

See Appellant Sworn Affidavit and Supporting Exhibits Id in Appellants Independent Motion for a New Trial.

to reiterate his argument pursuant to Brady v Maryland 373 U.S. 83 (1963).

And to save this court its valuable time, Appellant ask this court to consider his argument in that independent motion for a New trial. As he has requested for the lower court to transfer, all documents pertaining to the appeal of case 2002-GS 23-1063 that's under appeal By the S.C. Court of Appeals under Appellate Case 2016-000966.;

Judge Edward W. Miller 4-26-2016 case 2002-GS 23-1063 order denying Appellant's Motion for a New trial based on after discovered evidence is an abuse of his discretion based on the facts that exist in Appellant's Motion, Appellant has shown where the undisclosed evidence "Greenville Police incident dispatch Report. Exhibit #1 Ed. is such that it would probably change the result if a New trial is granted. He would use it to challenge the investigatory stop as being unlawful, and seek to have all evidence seized as a result of the unlawful investigatory stop. excluded under the fruit of the poisonous tree doctrine. Appellant has shown that this favorable evidence has been discovered since the trial. That He could not in the exercise of due diligence have been discovered prior to trial, because the prosecution concealed it in violation of the Brady rule, and that he sought it by due diligence pursuant to Brady rule on June 10, 2008. Appellant showed that the Greenville Police incident dispatch Detail Report is material because it involves the Terry stop, without probable cause as well as warrantless arrest and warrantless search of his vehicle without probable cause and seizure of evidence that convicted him. This favorable evidence is not merely cumulative or impeaching. This issue should have granted Appellant a New trial.

South Carolina Appellate Court Rule 407 Rules of Professional Conduct Rule 3.4 a lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, a lawyer shall not counsel or assist another person to do any such act.

SCACR 407 Rule 8.4. It is professional misconduct for a lawyer to (a) violate or attempt to violate the rules of professional conduct knowingly assist or induce another to do so through another, (b) engage in conduct of including dishonesty, fraud, or misrepresentation, (c) engage in conduct that is prejudicial to the administration of justice;

In Brady v Maryland, 373 U.S. 83. The Supreme Court held that due process requires the prosecution to disclose upon request evidence favorable to an accused when such evidence is material to guilt or punishment. 373 U.S. 83, 87 (1963) A Brady violation occurs when (1) evidence is favorable to accused because it is exculpatory or impeaching, (2) evidence was suppressed by the state either willfully or inadvertently and (3) prejudice ensued. The prosecution has a duty to disclose regardless of whether the defendant makes a specific request Brady supra. This rule extends to evidence that is not in the actual possession of the prosecution but known by others acting on the government's behalf; in the particular case including the police. State v Kennedy, 503 S.E. 2d. 214 (SC App. 1998); Kyles v Whitley, 514 U.S. 419

115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Favorable evidence includes both exculpatory and impeachment evidence. United States v Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defendant, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Bagley 473 U.S. at 682, 105 S.Ct. 3375. Once a Brady violation is established, reversal is required. Kyles v Whitley 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

Had the prosecution not suppressed the Greenville Police incident dispatch Detail Report containing favorable exculpatory and impeachment evidence of the timing of events that took place concerning the investigatory stop in which could have been used to impeach the state's witnesses concerning whether or not officer John Thompson was the officer on the scene at 1:10 to have been the officer to have stopped Appellant and girlfriend in white Ford Taurus based on his testimony Id in Appellants Independent Motion for a new trial pursuant to 517-23-110 Brady v Maryland, 373 U.S. 83 (1963) and see crim. P. Rule 29(b) after of newly discovered evidence. Exhibit # 5 page 275 line 16-19, page 276 line 1- page 278 line 8 page 284 line 17- page 285 line 4 Trial transcript of his testimony before the jury. Exhibit # 1. undisclosed Greenville Police incident

dispatch Detail Report contains Exculpatory Evidence that officer John Thompson star 303 didn't arrive on the scene until 1:26:34 am, and Exhibit # 14 contains evidence introduced into evidence by the prosecution through its own witness that, the white Ford Taurus driven by B/M Appellant was stopped at 1:10 am. Page 366 line 23 - page 367 line 1.

Exhibit # 16 contains evidence that investigating officer June Unit 208 met with forensic officer S.C. Pratt, and requested him to secure digital images of the white Ford Taurus he stopped after it left the apartment complex. Exhibit # 1. The undisclosed Greenville Police incident dispatch Detail Report contains exculpatory evidence that officer Jones Unit F8 (208) star 378 arrived on the scene at 1:07:40 am based on the information he received from 911 dispatch at 1:07:35 am, and the only reasonable suspicion he could have stopped the white Ford Taurus for a 1:10 am is that the driver was a B/M, which is insufficient reasonable suspicion to conduct a Terry Stop. General suspicion of criminal activity based solely on race does not justify a seizure. Whren v U.S., 577 U.S. 806, 810 (1996) (no reasonable suspicion because race decidedly impermissible factor upon which to stop vehicle) U.S. v Swindle, 407 F.3d. 562 569-70 (2nd Cir 2008) (no reasonable suspicion to order stop based on driver being same race as suspect.

U.S. v Jones, 292 F3d 215, 218 (4th Cir 2001) no reasonable suspicion when Tip solely described race and officer pulled over car despite lack of traffic or equipment violations).

The only reasonable suspicion officer Jones unit 208 could have stopped the white Ford Taurus he saw exiting parkwaywood Apartment complex onto 245 Congaree Rd at 1:10, was based on the information dispatched out by 911 dispatcher 386 Valarie D Blake at 1:07:35 am was An Armed Robbery had just occurred by a B/M 5'10 Blue Coat Slim, Pistol to head to employees. Id in Exhibit #1.

undisclosed Greenville Police incident dispatch Detail Report: See Exhibits 14 and 16. Based on the timing Id in Exhibit #1. officer John Thompson star 303 was not on the scene at 1:10 in order to be the officer that stopped the B/M in the white Ford Taurus at 1:10 am, when he didn't arrive on the scene until 1:26:34 am. But because facts show that officer Jones Unit 208 stopped with white Ford Taurus because it was driven by a B/M suspect, who also was described as a B/M suspect to had just committed the armed robbery, was insufficient probable cause of reasonable suspicion for stopping the B/M Appellant driving a white Ford Taurus.

In order to establish a reasonable suspicion to stop Appellant a B/M in a white Ford taurus in which the Greenville Police department had to establish a particularized

and objective basis, supported by specific and articulated facts, for suspecting a person of criminal activity, a police officer must have a reasonable suspicion to stop a person in a public place. Terry v Ohio, 392 U.S. 11

The undisclosed exculpatory evidence of the timing that information was received, to establish a reasonable suspicion. Id in Exhibit #1. Appellant would had it been disclosed made a pre-trial Motion to exclude the evidence obtained as a result of the unlawful investigatory stop. Because Exhibit #1 would have supported the disclosed evidence in Exhibit #14 and 16, that officer John Thompson was not the officer who stopped Appellant in the white Ford Taurus at 1:10 am, and that to establish a reasonable suspicion, He knowingly and intentionally included false misstatement of facts in his Supplemental Report Id in Exhibit #15, 3 pages, and the prosecuting attorney knowingly having him testify under oath to those false facts at Trial. See Id in Exhibit # (5) pages 273 line 19- page 278 line 8. Absent disclosure of the Greenville Police incident dispatch Detail Report containing evidence that would contradict the false facts disclosed to Appellant and Counsel on May 19, 2008 Id in Exhibit # 2, (5) was to prevent Appellant from through Counsel, challenging the investigatory stop, in which to seek to exclude all evidence the state intended to use to convict Appellant to was obtain as a result of an illegal investigatory stop, as Fruits of a poisonous tree. See Muttum v State, 654 S.E.2d 846

The fruit of a poisonous tree doctrine, provides that evidence must be excluded if it would not have come to light but for the illegal action of the police, and the evidence has been obtained by the exploitation of that illegality. The challenge evidence is admissible however, if it was obtained from a lawful source independent of the illegal conduct. Appellant contends that absent the illegal Terry stop, and seizure of \$328.00 dollars U.S. currency without probable cause, through issuance of a search warrant to search his vehicle and an arrest warrant to arrest him, ~~did~~ evidence obtained after that as a result of the illegal stop. Would have been excluded had the prosecution disclosed to Appellant, the Greenville Police incident dispatch Detail report Id as Exhibit # 1., and in the exclusion of all the evidence there is a reasonable probability that the outcome of the retrial will be different, if this Court reverse Judge Edward W. Miller's April 26 2016 order denying Appellants Motion for a New Trial. Id as Exhibit A.

Conclusion

For all of the foregoing reasons, it is respectfully submitted that the order denying Appellant's Independent Motion for a New trial pursuant to § 17-23-110, Brady v Maryland, 373 U.S. 83 (1963) and SCR Crim P Rule 29(b) after or newly discovered evidence be reversed and remand for a new trial.

Respectfully submitted by.

Robert Max Watkins 243863 Q2A118
Perry Correctional Institution
430 Oaklawn Rd
Pelzer SC, 29669

Date.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller Circuit Court Judge
Criminal Case 2002-6523-1063

Robert Max Watkins

Appellant

v

STATE

RESPONDENT

Proof of Service

I Robert Max Watkins on 8-3-16 placed in P.C.I
mailroom window a copy of my initial Brief of
Appellate Case 2016-000966 27 pages to The S.C Attorney
General's Office Alan Wilson and John Benjamin Aplin Esq.

Witnessed by _____

Robert Watkins

Robert M Watkins
243803 62A 118
Perry Corr Inst
430 Oaklawn Rd
Pelzer SC 29669

Sworn to before me on this 3-2 day August month 2016 year

SC Notary Public: Nancy M. Schubert Exp. Date 1-23-2027

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AUG 15 2016

Proof of Service

That I Robert May Watkins, on _____ have put ~~SC~~ Court of Appeals
 the S.C. Court of Appeals and opposing party S.C. Attorney
 General's office ATTORNEY GENERAL ALAN McCrory Wilson
 Assistant Attorney General Benjamin Aplin on Notice
 That the exhibits supporting My Initial Brief for Appellate
 Case # 2016-000966, is a part of My Case 2002-6523-1063
 Independent Motion for a New Trial pursuant to § 17-23-110,
Brady v Maryland 373 U.S. 83 1963 and S.C. Crim. Rule 29(b)
 after or Newly discovered evidence, that both the S.C. Court
 of Appeals has a Record of; and that the S.C. Attorney General's
 office.. This Proof of Service to my Proof that the S.C. Court of
 Appeals and S.C. Attorney General's office is aware of
 the existing exhibits that are mentioned in my initial Brief
 of Appellate Case 2016-000966. I have filed a Motion
 with S.C. Court of Appeal to have the entire Motion for a new
 trial and exhibits transferred up to the S.C. Court of Appeals
 to have it made a part of the Record of Appellate Case
 2016-000966.

Robert Watkins ✓

Robert M Watkins 243803
 Q2A118 Perr Corr Inst
 430 Oaklawn RD
 Peter SC 29668

Sworn to before
 me on this 3rd day August month, 2016 year

S.C. Attorney Page C merchant
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Robert M. Watkins 243803

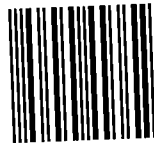
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