

THE STATE OF SOUTH CAROLINA
In THE SOUTH CAROLINA COURT OF Appeals

Appeal From Sumter County
Court OF General Sessions

Judge: D. Craig Brown

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DEC 19 2016

SC Court of Appeals

Case No. 2016-002217

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The State OF South Carolina
McIntagin Fatir Abdullah

V.

S.C. SUPREME COURT
Respondent
Appellant

Motion OF Brief History

On the date of 3/14/04 the Plaintiff was charge with Murder,
Assault an battery with intent to Kill, Carrying a gun on
A.B.C. Property, and Possession of a gun, and detained in Sumter
County Detention Center, for a total of 10 months with no indictment
by the state. On January 6, 2005 a federal grand jury returned
a one count indictment alleging a violation of 18 U.S.C. 922(g)
Felon in Possession of a gun, and 18 U.S.C. 924(a) Possession
of Ammunition. This same federal indictment also includes
the Murder of David Way, and the A.B. I.K. of Merrell
McBride. See: Federal Indictment.

On the date of October 19, 2005 the Plaintiff begin a three
day trial in the United States District Court, in Columbia,
South Carolina, and was subsequently found guilty for
Felon in Possession of a gun, Ammunition, and careered
out under the A.C.C.A. under 924(e).

On the date of September 12, 2006 the Plaintiff was sentence with an 8 point enhancement that increase his criminal points to 43 in a Cross Reference to Murder. See: Motion To object Detainer Pg. 7-10.

Plaintiff was sentence to life in the United States Penitentiary. On the date of March 21, 2016 the Plaintiff life sentence was vacated in the U.S. District Court in Columbia, South Carolina. After the court hearing the Plaintiff was arrested by Detective, James Turner for the Murder of David Way, and served the Plaintiff the warrants. Detective, James Turner stated that he was following the order of the state Prosecutor, Ernest A. Finney III to detain and arrest the Plaintiff, and transport the Plaintiff back to Sumter County Detention Center. See: Detainer by Sumter County Sheriff's Dept.

Plaintiff has been incarcerated for the last 12 years, and still has not been indicted for murder by the state, or the federal government. Plaintiff has also been denied bond twice by the state. Plaintiff is accusing the state Prosecutor, Ernest A. Finney III, and Detective, James Turner, who is the investigator over this case for manipulation, Harrassment, insufficient evidence to indict, and unlawfully incarceration.

Questions Presented

If the state had presented these state charges to the state grand jury within the 10 months that the defendant was in custody by the state, could the state grand jury have indicted the defendant? If yes, why didn't you?

Did the state violate the fast and speedy trial motion that was filed by Attorney, Arthur Wilder by not presenting these state charges to a state grand jury within 10 months that the defendant was in custody? See: Fast and speedy trial motion filed 2004 Sumter County General Session.

Statement OF THE CASE

On the date of March 24, 2016 Attorney, Timothy Murphy, filed a Fast and speedy trial motion on behalf of his client, Muttagin Abdullah. During the month of August 2016 Mr. Abdullah filed a motion to have his Attorney remove from his case. On the date of August 29, 2016 Judge: Jeffrey Young, granted the motion, and allowed Mr. Abdullah to represent himself. On the date of October 17, 2016 Mr. Abdullah begin his trial as a Pro Se Representer. On the date of October 19, 2016 the last witness to testify was Dr. Janice Lage, the Pathologist who perform the Autopsy on the victim, David Way body.

On the date of October 20, 2016 the Prosecutor, Ernest A. Finney III, and the defendant, Muttagin Abdullah begin closing arguments. Before the jury could provide a verdict, the jury requested from Judge: D. Craig Brown, to listen to the audio of all three of the state witnesses. The audio of state witness Merrell McBride, and Cory Scott was played over for the jury. On the date of October 21, 2016 the audio of state witness, Thurston Lane was played, and the jury took 1 hour, and 45 minutes to deliberate a verdict of guilty against the defendant, Muttagin Abdullah.

Judge: Craig Brown, sentence the defendant, Abdullah to 5 years for the gun with 20 years for Assault and battery with intent to kill, running concurrent, and natural life for the Murder of David Way. The defendant is appealing the fact that the Prosecution did not prove that the High Point .45 Magnum was the murder weapon of David Way, and the assault weapon of Merrell McBride. The victim, David Way, was shot in the back of the head, and the bullet exit his forehead!

The victim, Merrell McBride was shot in the buttocks, and the bullet is still in the victim. There was no ballistics in this case to substantiate what firearm may have injured the victims. State witnesses testified that there was several unknown individuals shooting off guns in the open field of the Lion Pitt, Night Club, while patrons was leaving, and exiting the club. State witness, Thurston Lane testified that the defendant, Mr. Abdullah pivoted to the left, and pivoted to the right, by discharging a 9 miller meter. State witness, Cory Scott testified that the defendant, Abdullah discharge a High Point 40 caliber 7 times. The state has as evidence a High Point .45 Magnum.

Ground One: The Double Jeopardy Clause protects defendants from harassment by preventing them from being put on trial more than once for the same offense.
See: Fifth Amendment.

This is the second time that the defendant, Mr. Abdullah has been arrested, and charge with the Murder of David Way, and the A.B.I.K. of Merrell McBride by the state of Sumter County in 12 years. The defendant, Mr. Abdullah was charge and convicted for Felon in Possession of a gun in federal court with the enhancement of the same conduct test, and same elements test, of the murder of David Way. See: Rulings of the U.S. Court of Appeals For the fourth circuit. Now that the defendant's Federal Life Sentence has become vacated by the government, the state wants to prosecute the defendant with the same conduct

test, and same elements test that was used against the defendant in federal court. *Lambert v. Workman*, 594 F3d 1260 (10th Cir. 2010) Under Double Jeopardy principles, a defendant cannot be prosecuted for a greater offense following his conviction for a lesser included offense. *U.S. v. Johnson*, 169 F3d 1092 (8th Cir. 1999) A state prosecution that is merely a sham and a cover for a federal prosecution such that it is in essence a second federal prosecution may violate the double jeopardy clause.

Ground Two: The defendant has been convicted for Felon in Possession of a gun in federal court, and has now been convicted for the same gun in state court.

This is also a violation of the Double Jeopardy Clause.

See: Fifth Amendment: *U.S. v. Guzman*, 85 F3d 823 (1st Cir. 1995) *Bartkus v. Illinois*, 359 US 121, 131-33 31 Fed 2d 684, 79 S Ct 676 (1959) Defendants prosecuted by two sovereign governments for same conduct may on occasion be able to invoke double jeopardy protection.

Ground Three: Motion For A Speedy Trial And Motion For Release on Personal Recognizance was violated.

Discharge of a Prisoner if not given speedy trial, S.C. Code 17-23-90. Right to demand speedy trial S.C. Code 17-23-90. Kelly Jackson the prosecutor at the time while acting under color of state and federal laws and procedures chose to act intelligently with the best interest of the

federal government in mind at that time to dismiss its murder charges against Muttagin Abdullah. See: News Article enclose date 3/23/16. It is clear that in order to dismiss a charge one must first have been subsequently charge with a said offense. This would have place the said party in jeopardy. It is reasonably presume that if the state had believe at the time it could have obtained a conviction for life imprisonment at the time when Kelly Jackson dismiss its state level murder charge against Mr. Abdullah, that it most likely would have done so. And in so doing the state had forfeited its chance to prosecute Mr. Abdullah on said murder offense,

because without haven obtain newly discovered material, or substantive evidence the state could not recharge the defendant twice for the same offense. Other wise all Nolle Prosequi, and dismiss offenses could just be reinstated, when and however the state so chooses, even against the 5th, 9th, and 14th amendment and the supremacy clause as a whole.

Either this is double jeopardy, or the state should have been force to release the defendant for failure to indict under some type of rule.

Mr. Abdullah had a right to be free from double jeopardy no matter what the prosecution or government thought of him as a person.

Mr. Abdullah did, and does have a right to equal protection of the law at all phases, not to be construed. The fact is the government gambled and lost.

Kelly Jackson decided to accommodate the federal government, in so doing it released Mr. Abdullah from initial jeopardy, because it believe him to have been in greater jeopardy, and because of the 12 years, and 7 month delay from the date of this incident, Mr. Abdullah should not have been compelled to stand Pro Se or other wise without the states submission of newly discovered evidence.

On the other hand we can always see the states presumption view of never having drop its charges at all. Yet if this is the case, then the state has once again violated both due process, equal protection of the law as well as numerous other rules, guidelines, rights, and privillages as guaranteed by both state, and federal laws, mandates and other statures in favor of the defendant Mr. Abdullah.

Then it is obvious that the state delayed justice, misused and abused its power and violated Mr. Abdullahs right to be prosecuted in a timely manner and prejudice him dramatically, critically, and irreversibly. Time hinders memory, and possible witness become loss, decease, and can be created, fabricated by adverse party's.

In Mr. Abdullahs case it can easily be presume that it was and is all of the above. The state charge Mr. Abdullah for murder in 2004, and if it took 12 years to prosecute Mr. Abdullah, then it abuse its powers and denied Mr. Abdullah his granted and guaranteed protections at many levels.

The state made a error in its decision by law and by right. The cause of these results are in the Pro Se defendants favor. The states errors was and are most grievance errors; They are also irreparable ones.

Ground Four: The state never prove that the High Point .45 Magnum was the murder weapon of David Way, or the assault weapon of Merrell McBride.

On the date of 3/14/04 at approximately 3:45 am at the Lions Pitt Night Club, in Sumter, South Carolina, Patrons were leaving, and exiting the Club when several unknown individuals begin discharging firearms out in the open field of the Night Club. Witnesses identified approximately two car loads of individuals were involved.

On the date of 10/17/16 during the first day of the trial, the victim Merrell McBride testified that he was intoxicated when he was shot from behind in the buttocks, and that he fell to the ground and look back, and that he saw the defendant, Abdullah with a gun in his hand.

On the date of 10/18/16 during the second day of the trial, the second witness Thurston Lane testified that he saw the defendant, Abdullah pivot to his left, and then pivot to his right discharging a 9 miller meter, but the witness Thurston Lane, never testified that the defendant, Mr. Abdullah shot anyone.

The third witness Cory Scott testified that he saw the defendant, Abdullah discharge a High Point 40 caliber 7 times in a crowd of people in front of the Night Club. The defendant, Mr. Abdullah who represented himself cross examine Mr. Scott, and ask Mr. Scott was he telling the jury that the defendant, Mr. Abdullah shot someone,? and Mr. Scott stated yes. Mr. Abdullah then told the witness Mr. Scott to tell the jury who the defendant, Mr. Abdullah shot.

The witness Mr. Scott stated that they call the guy by some type of street, or nick name that he mention that the defense, or the prosecution had no knowledge of. The defendant, Mr. Abdullah then ask Mr. Scott, who shot the other victim, Merrell McBride, and Mr. Scott stated, I

dont know, the word of mouth is that you did it, referring to the defendont, Mr. Abdallah.

Argument: The victim, David Way was shot in the back of his head, and the bullet exit his forehead. The other victim, Merrell McBride was shot in his buttocks, and the bullet is still inside the victim. Their is know ballistics in this case. In order for the state to successfully prove their case, the state would have to prove that the High Point .45 Magnum was the murder weapon of the victim, David Way, and the assault weapon of the victim, Merrell McBride. The state never prove this. Therefore, the sentence, and conviction shall be reverse, and over turned by the law of the land, which is the Supreme Court of the state of South Carolina.

In My Conclusion: This case shall be reverse, and over turned for lack of evidence, Double Jeopardy, and failure to indict in a timely manner.

I declare under penalty of perjury that the foregoing is true and correct, executed on the date of 12/12/16

Signature: Mustajir Abdallah

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
State of South Carolina,)
)
Plaintiff)
)
vs.)
)
Muttaqin Abdullah,)
)
Defendant)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I, the undersigned, an employee of the Sumter County Law firm of Young, Reiter & Keffer, P.A., attorneys for the Defendant, do hereby certify that I have this 29th day of March, 2004, served the foregoing **Rule 5 and Brady Motion for Discovery and Inspection** by personally depositing in the United States Postal Service with proper postage affixed thereto, addressed to the following:

Kelly Jackson, Solicitor
Third Judicial Circuit
Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150



Harriet Payne, Legal Assistant

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YOUNG, REITER & KEFFER, PA

ATTORNEYS AT LAW
23 WEST CALHOUN STREET

SUMTER, SOUTH CAROLINA 29150
803-773-4371 • FAX 773-4374

KENNETH R. YOUNG, JR.**
LOHMAN D. REITER II**
JOHN S. KEFFER
EDGAR R. DONNARD, JR.

E-MAIL: YOUNGASSOCIATES@sc.rr.com

**CERTIFIED MEDIATORS
**ARBITRATORS

March 25, 2004

VIA FAX TRANSMITTAL - 436-2410

The Honorable Kathy Ward
Sumter County Magistrates Court
ATTN: Teresa Sandifer
115 North Harvin Street
Sumter, South Carolina 29150

IN RE:	<u>Defendant</u>	<u>Charge</u>
	Abdullah, Muttaqin	ABWIK, Murder, Felon in Possession of Hand Gun, Poss. of Firearm, ABC Premises
	Billips, James	ABHAN
	Byrd, Ernest	CDV H&R, Violation of Prob.
	Edwards, Lamick Kareem	Armed Robbery; Burglary 1 st
	Glisson, Reginald P.	Violation of Prob., Possession of Controlled Substance
	Slater, Johnnie	S. C. Gun Law, ABC Premises

Dear Judge Ward:

Please be advised that I have been appointed to represent the above stated Defendants in the above matters. I am hereby requesting a Preliminary Hearing for each of the above named Defendants on the charges as stated above. Please document your files and forward any and all future correspondence concerning these matters to me.

With kindest regards, I am

Sincerely yours,

JOHN S. KEFFER

JSK/hp

cc: Defendants

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YOUNG, REITER & KEFFER, PA

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KENNETH R. YOUNG, JR.**
LOHMAN D. REITER II**
JOHN S. KEFFER
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**CERTIFIED MEDIATORS
**ARBITRATORS

March 25, 2004

Kelly Jackson, Solicitor
Third Judicial Circuit
Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150

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IN RE: Public Defender Case Assignments

Dear Kelly:

Please be advised that through the Public Defenders Corporation, I have been appointed to represent the following Defendant in regard to the charges now pending in the Sumter County General Sessions Court:

Defendant

Charge

Abdullah, Muttaqin

ABWIK, Murder, Felon in Possession of
Hand Gun, Poss.of Firearm, ABC Premises

Billlips, James

ABHAN

Byrd, Ernest

CDV H&R, Violation of Prob.

Edwards, Lamick Kareem

Armed Robbery; Burglary 1st

Glisson, Reginald P.

Violation of Prob., Possession of
Controlled Substance

Slater, Johnnie

S. C. Gun Law, ABC Premises

If you should have any questions or comments regarding this matter, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely yours,

JOHN S. KEFFER

JSK/hp

cc: Defendants

Terry Ouellette

From: Ahwild <ahwild@aol.com>
Sent: Friday, March 25, 2016 6:16 PM
To: Terry Ouellette
Cc: Timothy Murphy
Subject: Re: Muttonquin Fatir Abdullah

I did locate Muttonquins file. There is a transcript. Also W John Keffers original discovery paperwork- and mine. I filed a speedy trial motion and a motion for his release on personal recognizance - served on solicitors office 11-11-04 and and bond reduction motion 4-12-04 . These did not just disappear because the solicitors office nolle prossed. They elected not to indict back then there are circuit court rules that apply - John Hare was his federal public defender. District of sc . Either it's double jeopardy or there's a rule they were supposed to release him for failure to indict. So he's entitled to a pr bond. I read the article in the paper. Why not move for a reconsideration. W a release from Abdullah Tim can come get this file. I really think he should. Arthur ps John Johnson investigated - may be worth talking to John

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SESSIONS

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF SUMTER)
 The State of South Carolina)
 Plaintiff,)
)
 -vs-)
)
 Muttaquin Abdullah)
)
) MOTION FOR A SPEEDY TRIAL AND
) MOTION FOR RELEASE ON PERSONAL
) RECOGNIZANCE

TO: C. Kelly Jackson, SOLICITOR OF THE THIRD JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that the above Defendant moves for and/or renews a Motion for a Speedy Trial pursuant to rights given pursuant to State and Federal Constitutions. Please take note that the Defendant also herewith moves the Court for Orders granting the defendant a Personal Recognizance Bond or an Order of dismissal on all charges pending before the Court (and Order lifting any bench warrants that may have been imposed upon him) if the defendant has not been tried within two (2) terms of the first day of the term of Court immediately following the date of this Motion For A Speedy Trial. Defendant herewith requests and moves that this Motion for bond reduction, orders and or dismissal be granted forthwith for the Defendant upon the expiration of the second term by the Court, pursuant to Code Section 17-23-90 South Carolina Code of Laws of 1976.

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 SC Court of Appeals

Arthur H. Wilder, Jr.

DEFENDANT COPY

3-16
RMV
SIGN
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12

State of South Carolina
County of Sumter

State of South Carolina,)
)
Plaintiff,)
)
vs.)
)
Muttaquin Abdullah)
)
Defendant,)

RECORDED
In The Court Of General Sessions
2007 DEC 12 12:44
Third Judicial Circuit
SOUTH CAROLINA
SUMTER COUNTY, S.C.

MOTION FOR BOND OR
BOND REDUCTION
and/or lifting Bench warrant
Charge: Murder, AWIK, Felon in Poss of Handgun
and all charges currently pending

TO: THE HONORABLE COURT AND THE SOLICITOR OF THE THIRD JUDICIAL
CIRCUIT

The defendant by and through the undersigned counsel herewith moves the Court for Orders setting bond for the defendant, a reduction of those bonds currently or previously set, or in the alternative for an order of the Court discharging the defendant from custody, lifting any bench warrants or detainers which may have been imposed.

The grounds for this motion are the defendants rights pursuant to State and Federal Constitutions and his right to bond and such other and further grounds as may be argued when this motion is heard.

SLIP 11/14/07

RECORDED
DEC 19 2007
SC Court of Appeals

Sent from my iPhone

On Mar 24, 2016, at 1:31 PM, Terry Ouellette <touellette@sumtercountysc.org> wrote:

Arthur it was so nice to see you today at the BBQ Hut. Like I mentioned, Tim wanted me to get in contact with you to see if you remember ever representing a Muttengin Fatir Abdullah in the past. Before he changed his name to Abdullah, I believe his last name was Pinckney. The Public Index shows he had charges that were disposed of back 2005 and Thomas McElveen was is attorney. Tim said he mentioned your name in conversation so that it why we are checking. Thank you!

Terry

Terry Ouellette
Data Entry Clerk
Third Judicial Circuit Public Defender Office
215 N. Harvin Street, Room 151
Sumter, SC 29150
803-774-6136

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Muttagin F. Abdullah
225996 F-3 158 B-side

Case No. 2016-002217

Dear Clerk of Court

This facility has a policy
to not make copies that's
hand written by inmates.
Could you please send me
a copy of this motion
enclose as soon as possible.

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Thank You.

12/12/16