

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

APPEAL from DORCHESTER COUNTY
COURT OF COMMON PLEAS
HONORABLE DIANNE S. GOODSTEIN, Judge.

CASE NO. 2014-CP-18-0406

RECEIVED

MAR 29 2017

SC Court of Appeals

THE STATE ... RESPONDANT,
v.
John Robinson ... APPELLANT.

NOTICE OF APPEAL

I John Robinson hereby APPEAL this sentence, conviction
and the court's proposed final order of dismissal.
I received written notice of this proposed order
on February 14th, 2017 via Evans Correctional Institution's
mailroom.

Issue 1.

Trial court inappropriately left burden of Persuasion on defendant as the party opposing state's Batson motion, to show that his peremptory strike of white Juror was not racially discriminatory in prosecution for murder.

After defendant met his minimal burden to produce a valid, race neutral reason for strike, trial court should have shifted the ultimate burden of Persuasion back to the state to show that the proffered reason was pretextual, but instead, TRIAL COURT and not the STATE challenged the sufficiency of defendant's explanation.

At the state's motion for a BATSON hearing the Judge questions the defense on all strikes. When the Judge reached Juror #31 He questions the defense for the duration of 44 (forty-four) lines of Transcript which entailed Pages 63 and 64 of the original Transcript. Prior to Juror #31 on page 62 lines 10-17 Trial counsel says: "That's the helicopter man". The Judge asks trial counsel: "well why don't you like people that fly Helicopters?" This was for Juror #154. placing the burden of Persuasion on the defense.

Back to concerning Juror #31, The court again places the burden of Persuasion on the defense by grilling and interrogating the defense on his strikes.

when defense counsel states age and demeanor to explain strike, the Judge would not accept that as a valid, race-neutral reason, although demeanor is an established valid, race-neutral reason.

Instead of leaving the burden of persuasion on the state the Judge begins an adverse in-depth interrogation of trial counsel, telling trial counsel "what about her demeanor, How did she walk, GIVE ME A REASON!" The Judge then admonishes and berates trial counsel by saying: "you can't blame the defendant, you're the lawyer and you're in charge. I'm asking you to give me a reason and explanation of why you struck Mrs. Cook!"

This was after counsel had already stated age and demeanor. so now trial counsel is forced to persuade and prove the trial court on his reason and the state still had not said one word in its own challenge. AT this point trial counsel begins an explanation by saying: "The way she walked up and looked at us" (AT This point I will STATE THAT she walked up and turned toward the defense table with a very nasty frown and scrunched up face). The Judge then says: "How did she walk" AND "you Didn't want Anybody to look at you?"

Trial counsel replies: "NOT IN THAT DIRECTION, NOT IN THAT WAY". This aggravated interrogation of trial counsel concerning the strike of this juror removed the burden of proof and persuasion from the state and placed it solely on the defense.

Then after this the Judge then turns to the state for her input and argument. AT the end the Judge determines that Juror #31 is not race neutral.

I would cite STATE V. INMAN 409 S.C.19, 760 S.E.2d.105 as relevant case law in support of this argument.

The improper manner which trial court arrived at its ruling that defense violated Batson by using Peremptory strike on white Juror, having inappropriately placed and left burden of persuasion on defendant as party opposing state's Batson motion. This erroneous Batson ruling tainted the Jury giving rise to presumed prejudice as there is no way to determine with any degree of certainty whether defendant's right to a fair trial by impartial Jury was abridged. U.S.C.A. Const. Amend. 6.

This matter was raised, but under ineffective assistance of counsel, but not adjudicated.

I did not knowingly, voluntarily nor intelligently waive this issue. It was raised. It was maybe inadequately raised and asserted. In fact it was ignored, but IT WAS RAISED. The court improperly interpreted the issue of facts that establishes and supports that the trial judge made an erroneous Batson ruling.

As a defendant/Appellant I have the statutory right to have all issues raised Adjudicated. I reserve this right.

I assert this right. I would CITE AS
CASE LAW STATE V. SHORT, 327 SC 329, 489 SE 2d. 209,

U.S. V. Harbin, 250 F.3d. 532, STATE V. Williams 321 SC 455:

STATE V. INMAN 409 SC. 19, 760 SE 2d. 105. Rogers 2013 WL 734571.

Ineffective assistance of counsel

From the beginning of Mr. Dukies Appointment he was ineffective and hereby I will prove by meeting Both prongs of Strickland. First, Mr. Dukies refused my request for a preliminary Hearing. AT The PCR hearing he stated that I did not get one because he received the case after the 10 days limit had expired.

Please note if this was true that my constitutional right to counsel during pre-Trial period would have been violated. I have since presented evidence that Mr. Dukies testimony was a lie. Again, I present this factual evidence (see exH. #2) that Mr. Dukies was appointed as counsel before 10 days had expired he refused to request the motion as I asked and thus was ineffective. I present a copy of the envelope that Mr. Dukies first communication to me arrived in.

The postmark clearly reads November 14th, 2000. I was arraigned Nov. 6th 2000, on or about. Because of his deliberate ineffectiveness my constitutional right to counsel and to a preliminary hearing was violated and as a result I suffer extreme prejudice. I saw Mr. Dukies for the second time on November 12th 2001 after over one year of incarceration.

At this meeting Mr. Dukes specifically told me that the state has not presented any evidence to support their charge. They had not even presented Discovery. At that time I asked Mr. Dukes about the motions I asked him to file in my letters to him and he refused. This was two weeks before trial which I did not know and was not informed, but I still did not have the rule 5 discovery and neither did Mr. Dukes.

I felt his indifference and ineffectiveness so I immediately wrote to the presiding Judge at that time The Hon. Dianne S. Goodstein. This letter was stamped by the clerk of court on November 15th, 2001. (see ex. #1) I present as evidence a certified copy of this letter and plea for help explaining that Mr. Dukes refuses to render any type of effective assistance. Again, this was ignored. He admits that I requested a preliminary hearing.

Two weeks later I was at trial which I wasn't prepared for, and neither was Mr. Dukes as is evident by the following facts. A question of Hearsay testimony was to be introduced and the judge specifically told Mr. Dukes that when the time came if he would object that he would sustain it.

ROA Trial page 90, lines 18-22. Even with that pronouncement Mr. Dukes refused to make any objections throughout the entire trial. He did not make one objection specifically with the Hearsay testimony.

At the most important phase of trial, The Jury Selection, Mr. Dukes was wholly unprepared and ineffective. Mr. Dukes repeatedly tells the Judge that he does not have any info on the Jury at one point the Judge admonishes him (pg 64 lines 8-12) because of his ineffectiveness. He was turning to me for answers and the Judge had to tell him that he was The Attorney. Again on (Pg. 86 Lines 2-7) The Judge tells him again that when He's asked a question he has to answer he can't look to me to answer the questions. (see trl. pg. 68 Lines 19, 20, Page 69 Lines 12, 17, 25. Page 70 Lines 17-18, 21-25 Page 71 Lines 3-4) The Judge had to Give Mr. Dukes his own information on the Jury to pick a second Jury (see page 71 Lines 5-7)

All of these issues of fact clearly prove that Mr. Dukes fell below the normal standard of effectiveness. The STATE even said that Mr. Dukes knew they had an open file policy and all evidence would have been made available to him, But he did not even try. (page 85 Lines 8-13)

The prejudice that I suffer is that I received ineffective assistance of counsel which resulted in me not receiving a fair trial and a mis-carriage of justice By a fraudulent conviction.

Prosecutorial Misconduct.

The prosecutor deliberately misled and inflamed the passion of the jury solely to get a conviction. A wrongful conviction. The state went to a retail store and purchased a tire-iron. During closing arguments the prosecutor was swinging the tire iron back and forth in striking motions. At one point the prosecutor picked up a picture of the victim and hit the picture with the tire iron making a smacking noise and the family burst into tears.

At this emotional outburst the prosecutor fully extended her arm and using the tire iron as a pointer, pointed to the family with the store-bought tire iron and while pointing at the family with the tire iron told the jury to "Bring back a verdict where you can walk back in this courtroom and look that family in the eye and know you did the right thing to ease some of the pain of what they have lost."

This deliberate display was calculated solely to inflame the passion of and prejudice the jury to gain a wrongful, vindictive conviction. This created an uncurable prejudicial effect that resulted in a grave mis-carriage of Justice. I would cite as evidence and case law to support this fact People v. Johnson 403 Ny 5 2d. 11, 390 NE 2d. 764

The Judge's charge on malice murder was erroneous. I would cite as case law in support of this argument STATE V. BELCHER 385 S.C. 597

Trial page 579 lines 2-26 in essence the Judge tells the Jury "If someone intentionally kills another with a deadly weapon the implication of malice may arise" (Please note the only "weapon" produced was purchased from a store by the state). ... "In other words a person may be guilty of murder where there was no actual or specific intent to kill, General malice is sufficient without a specific intent to kill."

I was charged with Aforethought MALICE which denotes a specific intent and plan to murder. If you remove the specific intent to kill it is no longer Aforethought MALICE and should be either a lesser charge or a different charge.

If you remove the requirements of MALICE Aforethought murder then you create a lesser offense and must charge the Jury Accordingly.

These Issues WERE raised at the first PCR. as is evident by the facts and Case Law Citations these issues HAVE merit and STANDS AS ESTABLISHED VIOLATIONS of The established LAWS AND Constitution. As is evident in the merits of these issues you must Question; why has there NOT been any redress. These ARE clear and precise facts supported by the trial transcript. These are clear and precise Arguments supported by established case law Citations And Supreme Court Holdings and Rulings. AS it STANDS Thus would make it improper to ~~order~~ a dismissal based on the merits, the facts and The citations.

Justice is supposed to be blind, but only it seems, if the scales are full of money.

Being POOR and BLACK should not make me vulnerable ~~to~~ injustice. To order a dismissal would be a grave miscarriage of Justice.

MARCH 13th 2017
pro se

John Robinson
John Robinson

41 (S)

NOVEMBER 13 2001

COPY 640

To whom it may concern: Judge Goodstein

I have been incarcerated for over one year. Despite my constant inquiries, I have received not one piece of information concerning the case against me. I understand that this may be an "on going" investigation, but to my astute knowledge "on going", is the "continuance of", and to this day there has been no information or evidence given to support the charges against me. I have just spoken with my attorney, Mr. Gene Dukes, on 11/12/01. He has conformed that the prosecution has no evidence to support their charges.

On 09/04/01, I requested that Mr. Dukes file two motions on my behalf, which he has thus far refused to do. Unfortunately, I am inclined to believe that Mr. Dukes will not honor my request. Therefore, I would like to move before the court, by notice and motion to have the charge of murder against me dismissed. If that motion is denied, then I would like to move before the court, by notice and motion, for an Order prohibiting the prosecution from introducing at trial any/all evidence that has not been disclosed, as stated in section "F" of the Motion for Discovery and Inspection.

If this can not be accepted as legal filing of these motions, please instruct me on how to formalize and present said motions before the court properly.

Thank you,

[Signature]
JOHN ROBINSON

2014 JUN 17 AM 10:08
2014 JUN 17 AM 10:16
CLERK OF COURT
DORCHESTER COUNTY
CERTIFIED COPY

CERTIFIED COPY

11-15-01

[Signature]
Clerk of Court
Dorchester County

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SC Court of Appeals

EXH # 7

12 of 13

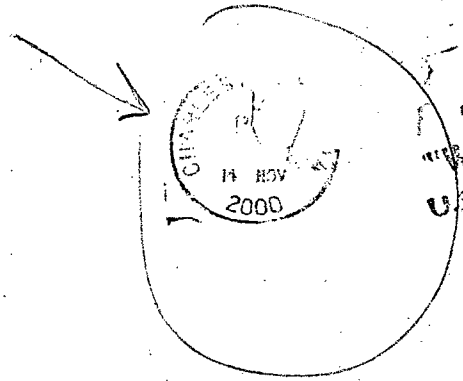
31 of 13

Counsel claimed that he did not get me the preliminary hearing because he received the case after the 10 day limit. This post-marked letter from him to me proves that false.

Gene W. Dukes
Attorney at Law
P. O. Box 622
100 Ridge Street
St. George, S. C. 29477

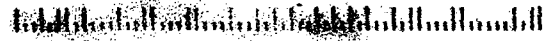


Handwritten notes: "30" and "M of"



John Robinson
Dorchester County Detention Center
100 Sears Street
St. George SC 29477

29477-2438 01



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SC Court of Appeals

EXH #2

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS
HON. DIANNE GOODSTEIN, Judge.

CASE NO. 2014-CP-18-0406

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SC Court of Appeals

THE STATE ... Respondant
v.

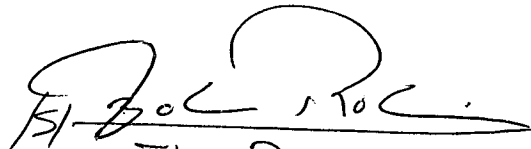
John B. Robinson, Appellant.

PROOF OF SERVICE

I certify that I have served the notice of appeal
on RUSTON W. NEELY AAG. by depositing a copy
in the U.S. mail, postage prepaid, on MARCH 13th 2017
and to clerk of court in Dorchester county for filing.

MARCH 13th 2017

DATE

 PROSE

John Robinson. (280311)
LAW OFFICE 3A-261
610 Hwy 9 West
Bennettsville S.C. 29512

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SC Court of Appeals

HON. CHERYL GRAHAM
Clerk of Court
5200 E. JIM BILTON BLVD.
ST. GEORGE S.C. 29477

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MAR 15 2017

Cheryl Graham, Clerk of Court
Dorchester County, SC
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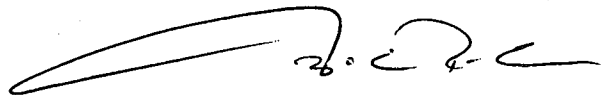
MAR 15 2017

Cheryl Graham, Clerk of Court
Dorchester County, SC

RE: NOTICE OF APPEAL

enclosed is a notice of appeal for filing on
The respondent along with proof of service
and a copy of the proposed order. Please file
Accordingly upon receipt. IF there is anything
That I need to do further please allow me
to know. Thank you for your time and service.
Please send me a certified copy if possible.

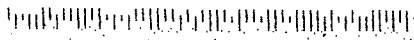
Humbly,

 Prose

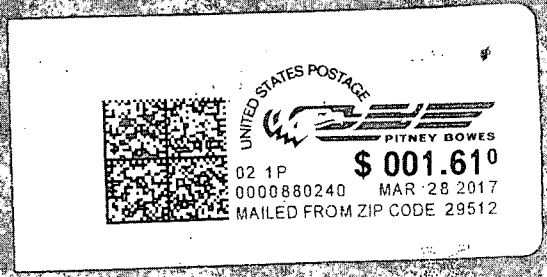
MARCH 13th, 2017

DATE

John Robinson (280311)
EVANS C.I. 3A-261
610 Hwy 9 west
Bennettsville S.C. 29512



37-261
o Hwy 9 West
Clematisville SC 29512



UNITED STATES POSTAGE

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1220 SENATE STREET
Columbia SC 29201

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