

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
HONORABLE L. CASEY MANNING, Circuit Court Judge

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LOUIS SANDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA      RESPONDENT

APPELLATE CASE NO 2016-000591

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JOHNSON PRO SE PETITION FOR WRIT OF CERTIORARI

**RECEIVED**

MAY 23 2017

S.C. SUPREME COURT

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO TESTIMONY WHICH INCLUDED PRIOR BAD ACTS OR WRONG DOING GIVEN BY GASHANDA DOWNING AND MARIA JACKSON

DURING TRIAL GASHANDA DOWNING GAVE TESTIMONY THAT WAS ELICITED BY PROSECUTOR CONCERNING AN ALLEDGE ACT THAT THE PETITIONER PULLED A GUN ON HER THE NIGHT OF THE CRIME TRANSP 530 LINES 1-12 THIS TESTIMONY AS WELL AS ALLEDGE ACT IF ANYTHING IS INDEPENDENT AND UNCONNECTED TO THE CRIME FOR WHICH PETITIONER WAS ON TRIAL FOR, THERE WAS NO ARREST, INDICTMENT OR CONVICTION FOR THE ALLEDGE ACT THE TESTIMONY THAT WAS ELICITED BY PROSECUTOR FROM MS DOWNING AND MS JACKSON DID NOT ESTABLISH MOTIVE, INTENTION, THE ABSENCE OF MISTAKE OR ACCIDENT, A COMMON SCHEME OR PLAN EMBRACING THE COMMISSION OF TWO OR MORE CRIME SO RELATED TO EACH OTHER THE PROOF OF ONE TENDS TO ESTABLISH THE OTHER, THE IDENTITY OF THE PERSON CHARGE WITH THE COMMISSION OF THE CRIME FOR WHICH HE/OR SHE IS ON TRIAL FOR. THE TESTIMONY THAT WAS ELICITED FROM THE WITNESSES WAS FOR THE SOLE PURPOSE OF PROVING THAT PETITIONER POSSESSED CRIMINAL CHARACTER OR HAS A PROPENSITY TO COMMIT THE CRIME WHICH HE IS CHARGED

THE PREJUDICIAL EFFECT OF THESE TESTIMONIES FAR OUTWEIGHED THE PROBATIVE EFFECT, THERE WAS NEVER A HEARING TO DETERMINE WHETHER THESE TESTIMONIES WOULD BE ADMISSIBLE. THEIR TESTIMONIES WAS AN ATTACK ON PETITIONER CHARACTER THROUGHOUT MS DOWNING TESTIMONY SHE CONSTANTLY REFERRED TO AN ALLEGED ACT THAT PETITIONER PULLED A GUN ON HER THAT NIGHT SHE TALKED ABOUT HOW IT EFFECTED THE CHILDREN TRANS P 531 LINES 1-11, NONE MS DOWNING TESTIMONY ESTABLISHED ANYTHING FOR WHICH PETITIONER WAS ON TRIAL FOR. MS JACKSON TESTIFIED THAT SHE NEVER SAW A GUN BUT SHE TALKED ABOUT HOW THE CHILDREN WERE AFRAID CRYING AND TALKING THE GUN FOR WEEKS AFTER; TRANS P 544 LINES 23-25 AND TRANS P 545 LINES 1-7. THE TESTIMONY ELICITED FROM MRS DOWNING AND MS JACKSON HAD NOTHING TO DO WITH WHAT PETITIONER WAS ON TRIAL FOR, THE UNITED STATES CONSTITUTION GUARANTEES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS WELL AS THE RIGHT TO A FAIR TRIAL. DUE TO COUNSEL DEFICIENT PERFORMANCE AT CRUCIAL STAGE IN TRIAL COUNSEL WAS INEFFECTIVE AND PETITIONER WAS PREJUDICED BUT FOR COUNSEL ERROR, THERE IS A REASONABLE PROBABILITY THE

RESULTS OF THE PROCEEDING WOULD HAVE BEEN  
DIFFERENT.

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO NEIL V BIGGERS THIS HEARING IS HELD TO DETERMINE WHETHER AN IDENTIFICATION IS RELIABLE, IN THIS HEARING THESE FACTORS MUST BE CONSIDERED (1) THE OPPORTUNITY OF WITNESS TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME (2) THE WITNESS DEGREE OF ATTENTION (3) THE ACCURACY OF WITNESS PRIOR DESCRIPTION OF THE CRIMINAL (4) THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION. (5) THE AMOUNT OF TIME BETWEEN THE CRIME AND THE CONFRONTATION. STATE WITNESS MS BOWERS TESTIFIED AT TRIAL THAT SHE TOLD INVESTIGATOR THAT SHE COULD NOT BE SURE OF THE PERSON BECAUSE SHE HAD TOO MUCH TO DRINK, MS BOWERS WAS ASK SO YOU ARE SAYING YOU WERE DRUNK AND THATS WHY YOU CANNOT BE SURE SHE SAID YES TRANS P 289 LINES 14-15. STATE WITNESS MS BOWERS NEVER SO PETITIONER DO ANYTHING, SHE NEVER SAW PETITIONER SHOOT A GUN THIS WITNESS TESTIFIED SHE NEVER EVEN SAW A GUN AND THE PURPOSE FOR THE NEIL V BIGGERS IS TO DETERMINE WHETHER AN IDENTIFICATION IS RELIABLE IN IDENTIFYING

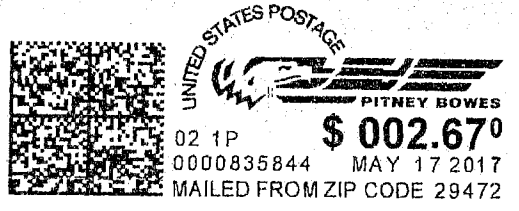
THE CRIMINAL, CLEARLY THROUGH THIS WITNESS  
OWN TESTIMONY WHEN SHE STATED SHE NEVER SAW  
PETITIONER WITH A GUN EVEN MORE SO SHE STATED  
SHE NEVER EVEN SEEN AN ACTUAL GUN TRIAL  
COUNSEL SHOULD HAVE OBJECT TO THIS HEARING  
BASED UPON THE FACT THAT THE FIVE FACTOR IN  
NEIL V BIGGERS IS TO BE CERTAIN THAT THE  
IDENTIFICATION OF THE CRIMINAL IS RELIABLE,  
IN THIS CASE THIS WITNESS NEVER SAW  
PETITIONER DO ANYTHING CRIMINAL, AND COUNSELOR  
WAS CLEARLY AWARE OF WITNESS TESTIMONY  
COUNSEL'S FAILURE TO OBJECT BECAUSE MS BOWERS  
NEVER SAW PETITIONER DO ANYTHING CRIMINAL,  
AND THE PURPOSE FOR THIS HEARING IS TO  
DETERMINE THE RELIABILITY OF THE WITNESS  
TO IDENTIFY THE CRIMINAL. TRIAL COUNSEL FAILED  
PETITIONER AT A CRUCIAL TIME IN TRIAL  
AND PETITIONER WAS PREJUDICED BY THIS IN  
COURT IDENTIFICATION BECAUSE LATER STATE  
DROUGHT MR. DAVID J. COLLINS TO TESTIFY AND  
HE WAS PROFFER AS AN EXPERT IN THE FIELD  
OF FIRE ARMS, AND MR. COLLINS TESTIFIED  
THAT THE SHELL CASINGS FOUND AT THE H&J  
CLUB WHERE MS BOWER TESTIFIED AND

IDENTIFIED PETITIONER AS THE PERSON WHO SHOT AT THE CLUB WHICH IT IS CLEAR THROUGH HER OWN TESTIMONY SHE STATES SHE NEVER SAW PETITIONER WITH A GUN AND THAT SHE NEVER SAW A GUN AT ALL, AND THE SHELL CASING FROM THE ACTUAL SCENE OF THE CRIME CAME FROM THE SAME WEAPON TRANS P 725 LINES 9-21. DUE TO TRIAL COUNSEL FAILURE TO OBJECT TO THIS HEARING MS BOWER WAS ALLOWED TO IDENTIFY PETITIONER IN THE PRESENCE OF THE JURY WHICH LEFT THE JURY TO INFERE THAT PETITIONER HAD THE WEAPON THAT WAS USED IN THIS CRIME, AND CLEARLY TRIAL COUNSEL WAS AWARE THAT THIS WITNESS NEVER SAW PETITIONER WITH A GUN AND THAT SHE NEVER EVEN SAW A GUN DUE TO HER QUESTIONING OF THIS WITNESS AFTER THE IN CAMERA HEARING WHEN SHE ASK HER AND YOU SAY THAT YOU DID NOT SEE PETITIONER PULL OUT A GUN TRANS P 315 LINES 24-25 AND MS BOWER ANSWERED I DIDN'T SEE A GUN NO TRANS P 316 LINE 2. THIS WITNESS CLEARLY NEVER SAW PETITIONER DO ANYTHING CRIMINAL AND DUE TO THIS IN COURT IDENTIFICATION WAS EXTREMELY PREJUDICIAL BECAUSE IT LEFT THE JURY TO INFERE THAT PETITIONER HAD

RETENTION

TIME  
SENSITIVE  
MATERIAL

FIRST CLASS



THE SUPREME COURT OF SOUTH CAROLINA  
DANTE L. E. SHEAROUSE, CLERK OF COURT  
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