

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Judge

Appellate Case No. 2017-001239

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JUN 15 2017

SC Court of Appeals

State of South Carolina,
v.

Respondent,

Deshon Norman,

Appellant.

EXPLANATION OF ISSUES ON APPEAL

Appellant Deshon Jermaine Norman prays this Court provide him with the opportunity to appeal the rulings the Honorable J. Derham Cole, in the underlying case.

June 12, 2017.



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NOW COMES, Appellant/Defendant Deshon Jermaine Norman (hereinafter “Defendant”), by and through counsel, explains why his plea was not voluntary and, therefore, he should be granted the opportunity to appeal the issues that arose in his prosecution:

1. That Defendant suddenly departed from the strategy discussed with counsel on the opening day of trial, following his transfer to jail, a night spent in jail, and a return transfer to court on the morning of March 3, 2017.

2. That counsel for Defendant was unaware of the change in position until arriving at court for the continuation of the trial.

3. That Defendant was clearly affected by an outside source.

4. That counsel for Defendant didn’t have any time in which to thoroughly counsel him regarding his decision.

5. That Defendant’s decision was made without knowledge that the State had withheld certain aspects of discovery.

6. That Defendant was unaware that the State had fabricated the reasoning behind the pretextual stop.

7. That his plea was made recklessly and without advice of counsel.

8. That the plea was not done knowingly given the fact that counsel was unable to discuss the information with Defendant.

9. That the Solicitor and Assistant Solicitor both made statements to Defendant via communication with the undersigned in open court.

10. That Defendant was intimidated by the statements of both the Solicitor and Assistant Solicitor to the Court about his failure to accept the 12-year sentence being offered.

11. That this communication was unsolicited and made despite his representation.

12. That this communication was made despite the fact that Defendant, by and through his counsel, had agreed to a bench trial so as to preserve his appellate opportunity.

13. That in doing so, the State violated the sanctity of the attorney/client relationship.

14. That Defendant wishes to withdraw his plea so that a Motion to Reconsider, or an appeal if necessary, may be submitted.

15. That to this point Defendant has not received Due Process.

INTRODUCTION

Defendant was indicted and tried for Trafficking. On March 3, 2017, without the assistance of his Counsel, and with both Assistant Solicitor Maxey and Solicitor Barnette instructing the Court of Defendant Norman's unreasonable failure to accept their plea offer, effectively pressuring the latter to decide impetuously, Defendant entered a plea of guilty. On March 9, 2017, Defendant moved to withdraw his earlier plea of guilty. The Court denied the motion to withdraw his plea.

FACTS

Sometime on January 19, 2016, Defendant was a passenger of a vehicle being driven by driver Cleveland Smith. While Cleveland was negotiating the Highway 29, well within the speed limit and in no violation of traffic regulations, a police car initiated the stop of his vehicle. Defendant, who had had several brushes with the law, jumped out of the car and ran away from the police. One of the Spartanburg Police Officers, identified as Lt. Steve Cooper, caught up with him and took him into custody.

A plastic bag with an-off white rock-like substance had allegedly been found near the feet of Defendant Norman. When he voiced opposition to helping police, his driver Cleveland Smith,

was also detained. Eventually, Cleveland Smith was arrested and charged with trafficking as well.

Defendant was taken to the City Narcotics building. Defendant was held for a couple of hours. He was unrepresented by counsel. During that time, he was questioned by at least three different officers.

As a result of his repeated interrogations, Defendant made incriminatory statements. Lt. Cooper then handed him documents to sign, and informed him that they would allow him to become an informant and not charge him, if he cooperated with the police.

Based on Defendant's unwillingness to work with police, a warrant of arrest was issued against him. On May 6, 2016, Defendant was indicted for Trafficking in Cocaine Base.

ARGUMENTS

I. THE COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT'S MOTION TO WITHDRAW HIS PLEA

In the *U.S. v. Moore*, the Court established six factors which could be evaluated in deciding whether to allow a defendant to withdraw his or her plea to an offense. Under 32(d) of the Federal Rules of Criminal Procedure, a defendant must show that his request to withdraw his plea is for a fair and just reason. The Moore Court offered six factors to consider when determining whether the defendant had met this burden.

The factors include (1) whether the defendant has offered credible evidence that his plea was not knowing or not voluntary, (2) whether the defendant has credibly asserted his legal innocence, (3) whether there has been a delay between the entering of the plea and the filing of the motion, (4) whether defendant has had close assistance of competent counsel, (5) whether withdrawal will cause prejudice to the government, and (6) whether it will inconvenience the court and waste judicial resources.

U.S. v. Moore, 931 F.2d 245 (4th Cir. 1991).

Defendant Norman attempted to withdraw his plea based on the following circumstances:

1. Defendant provided credible evidence that his plea was not knowing or voluntary. The day that the plea was taken, it can only be described as chaotic. Defendant was taken into custody at the close of testimony on Thursday, March 2, 2017. He was taken to jail by the Spartanburg County Sheriff's Office on Thursday afternoon, and brought back by SCSO. During that time, he did not have any communication with counsel. He did have communication with SCSO.

On the morning of Friday, March 3, 2017, Defendant Norman unilaterally decided to plead guilty without the assistance of counsel. Defense counsel was prepared to go forward with trial on Friday, which would hinder the Court and State from moving through the courtroom full of defendants who had a variety of motions to be heard. In an effort to intimidate Defendant Norman, both Assistant Solicitor Maxey and Solicitor Barnette instructed the Court of Defendant Norman's unreasonable failure to accept their offer.

As the Court is aware, there was great dissension between Defendant Norman and his counsel. In fact, the Court sent them out of the courtroom to discuss the matter. Unfortunately, Assistant Solicitor Hunter, Mr. Cooper and Mr. Shafer (SCSO), accompanied Defendant and his counsel. Defendant Norman and defense counsel were not allowed to conduct a meaningful discussion free from the State's interference.

Defendant Norman was unaware of the fact that the State had withheld two pages of discovery. Defendant was unaware of the fact that the State had purposefully withheld the name of the individual who had pulled in front of his vehicle, as he had testified to, and three witnesses offered by the State had denied.

3. Defendant Norman filed his motion to withdraw his plea, that was entered on

March 3, 2017, on March 9, 2017. This allowed him to use the transcript containing the sworn testimony of the police to illustrate that they had, in fact, lied.

4. The relationship between Defendant Norman and his counsel was severed by the unauthorized interaction between members of the SCSO and Norman. The Solicitor's Office promoted the interference with Defendant Norman's legally binding contract with defense counsel by discussing plea negotiations with the Court, and utilizing innuendo to coerce Defendant Norman into a plea, by illustrating to the Court that Defendant Norman needed to be taught a lesson for his incorrigible failure to accept what the State was offering the Defendant.

The Court, in turn, fostered and facilitated the breakdown of the attorney-client relationship by offering that it would accept a sentencing sheet devoid of counsel's signature. Despite the fact that the Court was aware of the great disconnect between attorney and client, it pushed forward in an effort to get the plea completed.

5. Granting Defendant Norman's prayer for relief will prejudice the State because it will have suffered a defeat, despite the plea. The individuals who make up law enforcement have one purpose-to ensure that the laws are followed to provide for a harmonious society free of mayhem. The hypocrisy of the State breaking the law while allegedly enforcing it is the source of great social turbulence, presently. If Norman's prayer for relief is denied, the greater prejudice will be felt by the Constitutions of both the United States and South Carolina.

6. The plea that was elicited by the State and the presence of the Court will be a fraction of the judicial resources and time that will be expended because the Court doesn't treat all law breakers the same. He treats law enforcement who break the law with respect because of his disdain for drug dealers who break the law. If the motion to suppress anything gathered as a result of the illegal traffic stop, that would have been the end of the case-period. The illegality of

the manner in which law enforcement, with the backing of the Court, will cost the taxpayers at least a quarter of a million dollars. (While this number is speculative, the following costs were taken into consideration: confinement of Defendant, cost of all aspects of the judiciary involvement, prosecution by the government, etc.).

The Court denied Defendant's Motion to Withdraw the Plea. The Court found that Defendant Norman did not show a fair and just reason for granting his motion to withdraw the plea.

Defendant contends that the failure of the judge to prevent and admonish the Solicitor and/or Assistant Solicitor from exerting pressure on the Defendant into entering in a plea, and the judge's own statement that the plea may be entered without the defense counsel's signature are tantamount to judicial interference.

Defendant believes that the judge's action and comment had a substantial effect on defendant's substantial rights since there is a reasonable probability that he would not have plead had the judge not assured him that it was valid to enter into a plea without his counsel's participation.

As pointed in *Santobello v. New York*, 404 U.S. 257 (1971), however important plea bargaining may be in the administration of criminal justice, a guilty plea is a serious and sobering occasion inasmuch as it constitutes a waiver of the fundamental rights to a jury trial. Thus, plea bargaining should never be taken lightly, and it should be done according to the laws. It is therefore unlawful and unethical when officers of the court unduly interfere in the process. A judge who participates in plea discussion not only infringes defendant's constitutional rights to jury trial and the right against self-incrimination, but also, compromises the neutrality of the court. It is unquestionable that a judge's words have a great effect and influence on a defendant's

decision to enter a plea. U.S. District Court for the Southern District of New York, 256 F. Supp. 244 (S.D.N.Y. 1966).

The right to counsel is one of the most important rights afforded by the Constitution to a person. The Sixth Amendment guarantees the right of Defendant to counsel, which included the right to effective assistance of counsel. But a lawyer's effectiveness in rendering assistance is sometimes affected by the judge's interference in the case. In interfering with the defendant's wish to litigate his charge, the judge in this case effectively rendered defense counsel ineffective to render assistance to his client.

Defendant asserts that having been deprived of effective assistance of his counsel by judicial interference in the plea discussion, as well as the failure of the State to provide him with relevant documents, he was unable to voluntarily, knowingly, intelligently and understandingly entered into a plea of guilty, and as such he should be entitled to withdraw the same.

II. FAILURE TO RECOGNIZE PERJURY OF THE STATE'S WITNESSES

The Court failed to recognize the perjured testimony of the three State witnesses who all said that there was no vehicle in front of Defendant's vehicle. The Court came to this conclusion despite the State's proffering of a partial statement from an unknown operative who said that *he was the one that pulled in front of the Defendant's vehicle*. Along those same lines, the Court did not have issue with the fact that the State withheld the author of said statement, as well as two pages of his narrative.

The Court failed to recognize the perjured testimony of Mr. Cooper. Mr. Cooper had the audacity to say that everyone was behind him. Not only had the unknown narrator offered that he was in front of the Defendant's vehicle, but Mr. Mathis was as well. Mr. Cooper did not qualify his answers. There was no other interpretation other than the fact that they lied, the

Court refused to acknowledge the blatant misrepresentation of facts by officers of the law. The trial judge simply stated, "I didn't see it."

Unfortunately, the Court, in failing to call out the officers' conflicting statements, has effectively endorsed the lies and deceit utilized by the State to get a plea. Moreover, the Court's failure to take issue with the purposeful delay in providing, or withholding altogether, the discovery related to the prosecution's case gives the State the belief that it is insulated from any punishment or penalty for its reprehensible conduct, and can act as it wishes to secure pleas and convictions.

III. THE VEHICLE STOP WAS NOT SUPPORTED BY REASONABLE SUSPICION NOR PROBABLE CAUSE IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ART. I SECTION 10 OF THE SOUTH CAROLINA CONSTITUTION

Both the State and Federal law permit a vehicle and its occupants to be temporarily stopped and detained if there is a probable cause to believe that a traffic violation has been committed. *State v. Williams*, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App 2002) In this case, Lt. Cooper and Investigator John Schafer stated in their respective Narrative Statements that while conducting a surveillance on a suspected drug distributor, Andrew Smith, they saw the vehicle allegedly occupied by him parked right beside a white SUV. When the vehicles pulled off, Lt. Cooper and Investigator Schafer decided to follow the white SUV, and when they saw the vehicle "weaving and having a hard time maintaining its lane of travel", they then initiated a stop on the vehicle. This was the pretext that somehow justified a search on the vehicle and the person of Defendant, until eventually a bag containing off-white rock like substance, which was later on identified as cocaine, was found.

It is significant that Defendant in this case is not charged at all with any matter other than Trafficking Cocaine base. In their respective Narrative Statements, the two officers made a

sweeping conclusion that the vehicle was “weaving and having a hard time maintaining its lane of travel”. This statement is made more suspect because the two officers never claimed that they have been observing the vehicle for a period of time, nor did they mention about the condition of the road or the general traffic situation at that particular time. There was no written report about the alleged traffic violation. The officers did not subject Defendant nor driver Cleveland to any sobriety or breathalyzer test, nor inquired if driver Cleveland was using the phone to account for the manner of driving (weaving). There was no mention about their physical appearance to warrant a suspicion on them. The officers could not provide or submit a video purporting to illustrate such a traffic violation. While it is true that there can be an articulable suspicion for a traffic stop even when the traffic violation is minor, it is also important to note there is no crime implicated by this manner of driving.

The law is clear that even a legitimate traffic stop will require the presence of probable cause to pursue further information. In this case, aside from their self-serving statements made after the fact, the officers failed to establish a probable cause to justify the vehicle stop.

IV. FAILURE TO PROVIDE DUE PROCESS

The acts of the State, with the support of the Court, made it extremely difficult for defense counsel to make an accurate analysis of the case, and prevented counsel from affording the best defense to his client. This is not the first time that the Court has failed to address the State’s illegal actions.

In 2004, Barry Underwood case was tried by this Court for Trafficking in Methamphetamine. Mr. Underwood’s residence was raided based on a Search Warrant that had been issued by a Magistrate that was based on the lie(s) of the affiant from the SCSO.

Apparently, Barry Underwood had sold methamphetamine to an individual who was pulled over by the SCSO a short time later. When pressured, the subject told the agents from the SCSO that Mr. Underwood had been the individual from whom the meth had been acquired. The SCSO went directly to the Magistrate with this information and got a search warrant.

However, the search warrant contained the term Confidential Reliable Informer to get the search warrant. It was alleged that a CRI had provided the information. It was alleged that the CRI has provided beneficial information to the State in the past that had led to the conviction of drug dealers in South Carolina.

The undersigned pointed out to the Court that the thirty-eight (38) word sentence that was in the affidavit bolstering the affiant's quest for the search warrant was complete fabrication. The Court was shown undeniable proof that the State had lied. Despite this heinous, unconstitutional conduct, the Court denied the Motion to Suppress. The Court promptly sentenced Mr. Underwood to 30 years.

In that case, Tonya Ware, Mr. Underwood's girlfriend, was charged with the same charges as Mr. Underwood. However, the State nol prossed the case against her so that it wouldn't look as if she was gaining anything with her testimony. However, after the trial, the State brought back the charge and allowed Ms. Ware to plead to a charge. She received a sentence of time served.

In this case, the Solicitor's Office offered Defendant Norman's co-defendant's lengthy record, the morning of trial. Furthermore, they, along with their fellow-conspirator, Cleveland Smith, presented to the Court that the charge for which he was a co-defendant, was still a live charge and that he hadn't been promised anything for his testimony. This was maintained

despite the fact that Trent Pruitt, his counsel, allowed him to testify without his presence.

Cleveland Smith's charge was not proessed the following Monday.

The Court's rulings in these cases were eerily similar, which are best illustrated by the post-trial motions that were filed. The Court's refusal to hold the State accountable for their illegal conduct is a theme found in both cases. In both of these cases, the Court chose to apply a moral law regarding the drug trade. Both defendants deserved to have the statutory and relevant case law applied to the facts and circumstances related to their cases. The Court abused its discretion in not applying the law and, in doing so, prevented the individuals from receiving due process of law.

The similarity in which these two cases were handled by the court, nearly thirteen years apart, is disconcerting. It appears that the State has no fear of misstating the facts and preventing defendants from getting complete discovery, pursuant to *Brady* and its progeny, because the rulings of the court have indicated that this conduct is acceptable.

The 4th Amendment and the South Carolina Constitution are far more important than anyone involved in this case. We as a people cannot afford a judicial branch that chooses to take stands on moral issues, as opposed to applying the law as required by the position for which they have been appointed.

In the matter of Deshon Jermaine Norman, the Court refused to see the unconstitutional, pretextual nature of the stop wherein there was no credible evidence that justified the stop. The Court then refused to see that the State withheld discovery, and contradicted that which they did provide. In short, Deshon Norman was cheated out of Due Process by this Court; and, he deserves to have this Court rectify this deprivation of his constitutional rights by allowing him to withdraw his guilty plea, and dismissing his charge with prejudice because of the State's illegal


conduct. The State's incessant violations of individuals' constitutional rights has got to stop. It needs to stop with Deshon Norman.

Court violated Due Process of Defendant by negotiating plea on behalf of the State. Court disregarded illegal stop of Defendant's vehicle, despite the fact that there was no corroborating evidence. The South Carolina Constitution, along with the 4th Amendment, protect against vehicular stops absent probable cause. However, the Court fostered and facilitated the guilty plea of the Defendant by ignoring the fact that the author of the ticketing event (warning ticket for illegal lane change), testified that the event that led to the stop occurred immediately "upon getting on their tail."

CONCLUSION

For all the reasons stated herein, Appellant/Defendant respectfully requests that he be given the chance to appeal issues related to the State's withholding of discovery materials, the State's perjured testimony, the Court's injection into plea discussions, the State's interference with his right to counsel, the voluntariness of his plea, the denial of his attempt to withdraw his plea, the lack of due process given to him in the prosecution of this matter, etc.

Respectfully submitted by:



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Date: June 12, 2017

**FORM 7
PROOF OF SERVICE
NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Judge

Appellate Case No. 2017-001239

State of South Carolina,
v.


Deshon Norman,

Respondent,

Appellant.

**PROOF OF SERVICE
EXPLANATION OF ISSUES, DESPITE PLEA**

I certify that I have served an Explanation of Issues, Despite Plea and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211, Alan McCrory Wilson, Attorney General, PO Box 1154 Columbia SC 29211, John Benjamin Aplin, Esquire, Assistant Attorney General, PO Box 1154 Columbia SC 29211, Robert Michael Dudek, Esquire, SC Commission on Indigent Defense, PO Box 11589, Columbia SC 29211, and William A. Maxey, Esquire, Assistant Solicitor for Seventh Judicial Circuit, 180 Magnolia Street, Spartanburg SC 29306, by depositing a copies of them in the United States Mail, postage prepaid, on June 12, 2017.


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JUN 15 2017
SC Court of Appeals

FORM 8
LETTER TO THE APPEALS COURT CLERK
EXPLANATION OF ISSUES ON APPEAL, DESPITE PLEA

June 12, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RECEIVED

RE: State v. Deshon Norman
Appellate Case No. 2017-001239

JUN 15 2017

Dear Honorable Kitchings:

SC Court of Appeals

Please find enclosed the following:

- (1) A copy of an Explanation of Issues on Appeal, Despite Plea; and,
- (2) Proof of Service for the same.

Sincerely,



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Robert Michael Dudek, Esquire
William A. Maxley, Esquire



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RECEIVED

The Honorable Jenny Abbott Kitchings JUL 15 2017
Clerk of Court SC Court of Appeals
PO Box 11629 SC Court of Appeals
Columbia SC 29211