THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Scott Sprouse, Circuit Court Judge

Case No.: 2015-GS-04-00456 & 457

The State ..... RESPONDENT,

V.

Royres Antwon Patterson ..... APPELLANT.

Pro-se Anders Brief

of Appellant

Other Counsel of Record

Alan M. Wilson, Esquire
Attorney General of South Carolina
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

Royres A. Patterson,#368043
McCI F-4 B-side
386 Redemption Way
McCormick, SC 29899
Appellant

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Issue 2

THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, WHICH WAS A DENIAL OF DUE PROCESS OF LAW.

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THE TRIAL COURT ERRED IN FAILING TO GRANT TRIAL COUNSEL'S MOTION FOR A DIRECTED VERDICT AS TO THE CHARGE OF ATTEMPTED MURDER, WHICH DENIED THE APPELLANT A FAIR TRIAL UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

STATEMENT OF THE CASE

After being indicted by the Anderson County Grand Jury and tried in the Court of General Sessions in Anderson County for murder and attempted murder, (2015-GS-04-00456 & 457) on April 25-27, 2016, the Appellant was convicted and sentenced to thirty (30) years for murder and a concurrent sentence of twenty (20) years for attempted murder.

The Appellant was represented by Bruce A. Byrholdt, Esquire, this appeal follows.

FACTS

THE APPELLANT WAS ARRESTED, TRIED AND CONVICTED ON THE UNRELIABLE IDENTIFICATION TESTIMONIES OF TWO INDIVIDUALS THAT DID NOT SEE HIM, THE APPELLANT, COMMIT ANY CRIMES. THE WITNESSES ALSO COMMITTED PERJURY DURING THEIR TESTIMONY, WHICH WAS EVIDENT BY THE STATEMENT WITHHELD BY THE SOLICITOR AND WAS PRESENTED AS NEWLY DISCOVERED EVIDENCE.

THIS APPEAL FOLLOWS.

THE TRIAL JUDGE ERRED IN ALLOWING THE IDENTIFICATION TESTIMONIES OF BENNETT AND WEST IN LIGHT OF THE UNRELIABILITY OF THEIR TESTIMONIES AT THE NEIL v. BIGGERS HEARING, WHICH DENIED THE APPELLANT DUE PROCESS OF LAW.

AT THE NEIL V. BIGGERS HEARING CONDUCTED IN THIS CASE, INVESTIGATOR DANNY BARTON TESTIFIED THAT HE PRESENTED A PHOTO LINE-UP DISPLAY TO BOTH TERRENCE WEST AND DAVID BENNETT, IN WHICH BOTH WITNESSES PICKED THE APPELLANT'S PHOTOGRAPH, INDICATING THE APPELLANT AS THE INDIVIDUAL INVOLVED IN THIS MATTER. SEE TR. P. 80-89.

ON DIRECT EXAMINATION AT THE HEARING, TERRENCE WEST TESTIFIED THAT HE HAD VIEWED THE PHOTO DISPLAY AND PICKED NUMBER 3 AS BEING THE SHOOTER. SEE TR. P. 94, LINES 6-18. HOWEVER, WEST ALSO TESTIFIED THAT HE HAD PICKED SOMEONE ELSE AS BEING THE SHOOTER. ON DIRECT EXAMINATION WEST TESTIFIED AS FOLLOWS:

Q. OKAY. DID YOU EVER CHOOSE ANYBODY ELSE OTHER THAN THE INDIVIDUAL, NUMBER THREE, AS BEING THE SHOOTER IN THIS CASE?

YES, MA'AM. --------

DAVID BENNETT'S TESTIMONY CONCERNING THE IDENTIFICATION OF THE INDIVIDUAL INVOLVED IN THIS MATTER IS JUST AS UNRELIABLE AS TERRENCE WEST'S. BENNETT WAS ASKED THE FOLLOWING AT THE HEARING:

Q. OKAY. AND DID YOU WITNESS THE SHOOTER THAT EVENING?

A. YES, MA'AM.

TR. P. 98, LINES 2-4.

BENNETT IS TESTIFYING THAT HE WITNESSED THE "SHOOTER", NOT THE "SHOOTING". BENNETT TESTIFIED THAT HE DIDN'T KNOW WHAT STREET HE WAS ON, IT WAS DARK AND THAT HE ONLY SAW A PERSON WHEN THE LIGHTS WERE TURNED ON. SEE TR. P. 98, LINES 13-25 - P. 99, LINES 1-21. BENNETT NEVER TESTIFIED AS TO WHETHER THE LIGHT WAS TURNED ON BEFORE, DURING OR AFTER THE SHOOTING. EVEN WHEN BENNETT AND WEST PICKED THE APPELLANT'S PHOTOGRAPH OUT OF THE PHOTO LINE-UP WHEN IT WAS SHOWN TO THEM BY INVESTIGATOR BARTON, THEY NEVER SAID HOW THEY KNEW THE APPELLANT WAS THE SHOOTER, THE INVESTIGATOR ASKED IF THEY RECOGNIZED ANYBODY IN THE LINE-UP AND THEY PICKED "NUMBER 3" AND SAID "THAT'S HIM". THEY NEVER SAID HOW THEY ALLEGEDLY VIEWED THE SHOOTING.

NEITHER ONE OF THESE WITNESSES TESTIMONY CONCERNING THE IDENTIFICATION OF THE PERSON WHO COMMITTED THE CRIME ALLEGED IN THIS CASE IS RELIABLE. NONE OF THESE WITNESSES ARE TESTIFYING AS TO HOW THEY KNEW THE APPELLANT WAS INVOLVED IN THIS CASE. NEITHER ONE OF THEM TESTIFIED THAT I SAW "NUMBER 3" POINT A GUN AND SHOT AT ANYONE.

IN NEIL V. BIGGERS, 409 U.S. 188, 198 (1972), THE UNITED STATES SUPREME COURT STATED THAT "[I]T IS THE LIKELIHOOD OF MISIDENTIFICATION WHICH VIOLATES A DEFENDANT'S RIGHT TO DUE PROCESS AND SO THE FOCUS OF THE INQUIRY IS ON THE RELIABILITY OF THE IDENTIFICATION TESTIMONY". IN THE INSTANT CASE, THE TRIAL JUDGE DID NOT CONSIDER ANY OF THE FIVE FACTORS ANNOUNCED BY THE UNITED STATES SUPREME COURT IN THE NEIL V. BIGGERS CASE, SUCH AS (1) THE WITNESS'S OPPORTUNITY TO VIEW THE CULPRIT AT THE TIME OF THE CRIME; (2) THE WITNESS'S DEGREE OF ATTENTION AT THE TIME OF THE CRIME; (3) THE ACCURACY OF THE WITNESS'S DESCRIPTION OF THE CULPRIT PRIOR TO THE IDENTIFICATION; (4) THE

WITNESS'S LEVEL OF CERTAINTY WHEN IDENTIFYING THE DEFENDANT AT THE CONFRONTATION, AND; (5) THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION.

IN THIS CASE, THE TRIAL JUDGE DID NOT CONSIDER ANY OF THE PREVIOUSLY STATED FACTORS IN DETERMINING THAT THE IDENTIFICATION WAS RELIABLE AND THAT THE IDENTIFICATION TESTIMONY WAS ADMISSIBLE, THE JUDGE JUST STATED THAT "AFTER HEARING THE TESTIMONY, REVIEWING THE EXHIBITS, I FIND THE PHOTOGRAPHS WERE NOT UNDULY SUGGESTIVE. THERE IS NO EVIDENCE OF COERCION OR ANY IMPROPER INFLUENCE BY THE OFFICERS. I HAVE ALSO REVIEWED THE TESTIMONY OF THE WITNESSES. EACH INDICATES THAT '<u>THEY HAD THE OPPORTUNITY TO VIEW THE ALLEGED SHOOTER AT THE TIME OF THE CRIME</u>'. EACH EXHIBITED A HIGH DEGREE OF CERTAINTY AS TO THEIR CHOICE AND I FIND THAT THE LINEUPS WERE SHOWN IN A REASONABLE TIME. I FIND THESE EXHIBITS ARE ADMISSIBLE IN THE STATE'S CASE." THERE WAS NO EVIDENCE PRESENTED AT THE HEARING THAT SHOWS THAT BENNETT AND WEST HAD AN OPPORTUNITY TO VIEW THE SHOOTER AT THE TIME OF THE CRIME.

THE TRIAL JUDGE ERRED IN ALLOWING THE IDENTIFICATION TESTIMONY OF THE WITNESSES BECAUSE THE TRIAL JUDGE DID NOT CONSIDER THE FIVE FACTORS REQUIRED BY THE <u>NEIL V. BIGGERS</u> CASE TO DETERMINE THE RELIABILITY OF THE IDENTIFICATION OF THE APPELLANT AS THE SHOOTER IN THIS CASE, WHICH DENIED THE APPELLANT DUE PROCESS OF LAW.

THE TRIAL COURT ERR IN FAILING TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, WHICH WAS A DENIAL OF DUE PROCESS OF LAW.

AFTER TRIAL WAS HELD IN THIS CASE AND THE SENTENCE IMPOSED, TRIAL COUNSEL FILED A MOTION FOR A NEW TRIAL BASED UPON THE DISCOVERY OF NEW EVIDENCE.

A HEARING WAS HELD ON MAY 11, 2016 IN REFERENCE TO TRIAL COUNSEL'S MOTION. DURING THE COURSE OF THIS HEARING, TRIAL COUNSEL, BRUCE A. BYRHOLDT, ESQUIRE, STATED TO THE COURT THAT "I HAD FILED A NOTICE OF APPEAL. I WENT SERVE IT ON THE STATE. THEY INFORMED ME THAT THEY HAD FOUND A CELL PHONE IN THE DESK OF THE CHIEF CASE INVESTIGATOR DANNY BARTON THAT HAD NOT BEEN PLACED IN EVIDENCE, HAD NOT BEEN DISCLOSED". TR. 589, LINES 18-22.

COUNSEL FURTHER ADVISED THE COURT THAT HE HAD WITHDREW HIS NOTICE OF APPEAL AND IMMEDIATELY FILED A MOTION UNDER RULE 29. TRIAL COUNSEL WENT ON TO EXPLAIN HIS POSITION FOR THE MOTION BY STATING TO THE COURT THAT "THE CELL PHONE THAT WAS FOUND IN MR. BARTON'S DESK DRAWER BELONGED TO TERRENCE WEST, ESSENTIALLY WHAT I WOULD CALL THE PRIMARY WITNESS AGAINST MR. PATTERSON AT TRIAL, HIS UNCLE WHO IDENTIFIED HIM". SEE TR. P. 589, LINES 23-25 - P. 590, LINES 1-4.

TRIAL COUNSEL'S POSITION WAS THAT IF THE PHONE HAD BEEN PROVIDED TO THE DEFENSE THROUGH THE DISCOVERY PROCEDURES OF RULE 5, COUNSEL WOULD HAVE BEEN ABLE TO ESTABLISH THAT THE PRIMARY WITNESS AGAINST THE APPELLANT WAS NOT BEING TRUTHFUL WHEN HE TESTIFIED THAT HE HAD NOT HAD ANY CONTACT WITH THE APPELLANT AFTER THE ALLEGED INCIDENT. COUNSEL ARGUED THAT THE PHONE RECORDS WOULD HAVE SHOWN THAT THERE WAS CONTACT WITH THE APPELLANT FROM THE WITNESS ON JUNE 13TH,

WHICH WAS THE DAY AFTER THE INCIDENT. SEE TR. P. 590, LINES 5-25 - P. 591, LINES 1-2.

TRIAL COUNSEL ALSO ARGUED THAT "MR. BENNETT, THE OTHER CODEFENDANT THAT IDENTIFIED MR. ROYRES AS THE ALLEGED SHOOTER, SAID HE HAD MADE A PHONE CALL TO THE DRUG DEALER, DESHAWN COWAN, ON THE WAY TO THE SCENE OF THE INCIDENT. BUT YET IN ALL THEIR STATEMENTS, BOTH MR. BENNETT AND MR. WEST CLAIM THEY DIDN'T KNOW THIS AREA, THEY HAD NEVER BEEN THERE BEFORE, AND I THINK IT GOES TO THE HEART OF THE MATTER". SEE TR. P. 591, LINES 3-11.

THE CELL PHONE FOUND IN THE INVESTIGATOR'S DESK AND THE STATEMENT MADE BY THE CODEFENDANT SHOW THAT THESE INDIVIDUALS' TESTIMONIES WERE PERJURY, THIS STATE'S HIGHEST COURTS HAS FOUND THAT "IT IS UNLAWFUL FOR A PERSON TO WILLFULLY GIVE FALSE, OR INCOMPLETE TESTIMONY, UNDER OATH IN ANY COURT OF RECORD, JUDICIAL, ADMINISTRATIVE OR REGULATORY PROCEEDINGS IN THIS STATE". SEE STATE V. STANLEY, 615 S.E.2D 455 (2005). GIVING FALSE TESTIMONY AT TRIAL CONSTITUTES THE FELONY OF PERJURY AND SUBJECTS THE PERJURER TO A FINE AND/OR UP TO FIVE YEARS IMPRISONMENT. COLLINS V. DOE, 539 S.E.2D 62 (CT. APP. 2000).

THE SOLICITOR KNEW THAT TERRENCE WEST'S TESTIMONY WAS FALSE BECAUSE THE PROSECUTION WITHHELD THE CELL PHONE. IN THE CASE OF UNITED STATES V. STOFSKY, 572 F.2D 237, 243 (2ND CIR. 1975)(CITING NAPUE V. ILLINOIS, 360 U.S. 264, 269, 79 S.CT. 1173, 1177, 3 L.ED.2D 1271 (1959), CERT. DENIED, 429 U.S. 819, 97 S.CT. 66, 50 L.ED.2D 80 (1976), THE SUPREME COURT OF THE UNITED STATES STATED THAT "INDEED IF ESTABLISHED THAT THE GOVERNMENT KNOWINGLY PERMITTED THE INTRODUCTION OF FALSE TESTIMONY REVERSAL IS VIRTUALLY AUTOMATIC". HERE, IT IS UNDISPUTABLE THAT THE WITNESSES TESTIFIED FALSELY AND THE SOLICITOR KNEW ABOUT IT, THEREFORE, THE TRIAL JUDGE SHOULD NOT HAVE DENIED THE MOTION FOR A NEW TRIAL.

THE TRIAL JUDGE WOULD NOT HAVE DENIED COUNSEL'S MOTION. SEE TR. P. 516, LINES 13-18. HERE RAYSHAWN DID NOT TESTIFY TO THE CIRCUMSTANCES LEADING UP TO HIS INJURIES, PLUS, THERE WERE TESTIMONY THAT THE INJURIES WERE NOT LIFE-THREATENING. THERE IS NOT AN IOTA OF EVIDENCE THAT INDICATES THAT THE APPELLANT ATTEMPTED TO MURDER RAYSHAWN COWAN.

IN CRIMINAL CASES IN THIS STATE, IN RULING ON A MOTION FOR A DIRECTED VERDICT, THE TRIAL JUDGE IS CONCERNED WITH THE EXISTENCE OF EVIDENCE. STATE v. BRYANT, 316 S.C. 216, 447 S.E.2D 852 (1994). THE MOTION FOR A DIRECTED VERDICT SHOULD BE GRANTED WHEN THE EVIDENCE MERELY RAISES A SUSPICION OF GUILT. HERE, IN THE INSTANCE CASE, THERE IS NOT A SCINTILLA OF EVIDENCE THAT THE JURY COULD HAVE INFERRED THAT THE APPELLANT ATTEMPTED TO MURDER RAYSHAWN COWAN.

THE APPELLANT IS ENTITLED TO REVERSAL ON ATTEMPTED MURDER BECAUSE THIS COURT IS NOT CONCERNED WITH THE WEIGHT OF THE EVIDENCE, BUT WHETHER THERE IS ANY EVIDENCE FROM WHICH THE JURY IS WARRANTED IN MAKING A FINDING. WASHINGTON v. WHITAKER, 317 S.C. 108, 451 S.E.2D 894 (1994). HERE, THERE IS NO EVIDENCE OF MALICIOUS INTENT ON THE PART OF THE APPELLANT, WHICH IS A CRUCIAL ELEMENT IN PROVING MURDER/ATTEMTED MURDER.

FOR ALL OF THE REASONS STATED ABOVE, THE APPELLANT ASK FOR A REVERSAL OF HIS CONVICTION AND SENTENCE FOR ATTEMPTED MURDER BECAUSE HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION HAS BEEN VIOLATED.

CONCLUSION

For the reasons stated in the attached brief, this Court should deny counsel's motion to be relieved and order further briefing in this matter.

Respectfully submitted,

June 16, 2017

Royres A. Patterson, #368043
McCI F-4 B-side
386 Redemption Way
McCormick, SC 29899
Appellant

ROYRES A. PATTERSON #368043

McCI F-4 B-side
386 Redemption Way
McCormick, South Carolina 29899

June 16, 2017

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

RE: The State v. Royres A. Patterson
Appellate Case No.: 2016-001084

Dear Clerk:

Please find for filing the Pro-se Anders Brief of Appellant. This brief is in reference to the above entitled matter, please return to me a clock-stamped copy of the brief.

Thank you kindly for all the attention and assistance you you give this very import matter.

Respectfully,

cc: Attorney General's Office
Personal file

Royres A. Patterson, #368043
FY 208
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post office Box 11629
Columbia, SC 29211