STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

PETITION TO CHARLESTON COUNTY
FOR REHEARING
Kristi L. Harrington Circuit Court Judge

Kadrin Singleton, Petitioner

V.

State of South Carolina Respondent

Appellate Case No. 2015-000306

PETITION FOR REHEARING
Pursuant To Rule 221 (a)

Kardin Singleton
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

INDEX

ISSUE PRESENTED

Whether the trial court in denying Petitioner's Motion to suppress Kenneth Fludd out of court identification?

STATEMENT

On November 20th 2012, Sharrell Williams of Charleston County Murdered at gun point. Petitioner was arrested for the Murder four (4) days later. On March, 4, 2013 the Charleston County grand Jury indicted Petitioner on Summary hearsay evidence for Murder, possession of a stolen Motor Vehicle, failure to Stop for blue light and trafficking Cocaine (Ind.# 2013-GS-10-1153, 2602, 2603, & 1457). (Tr.P. Vol.1, p.11 ll. 5-24; P. 33, l. 2-P. 37, l. 22). Immediately before trial, Petitioner unknowingly, involuntarily and unintelligently Pled guilty to all charges except Murder. Sentencing was deferred on the charges to which Petitioner Pled guilty. Petitioner was tried for the murde before a Jury of his peers from January 5th-9th, 2015, the Honorable Kisti L. Harrington, Circuit Court Judge, Presiding (Tr.P. Vol.1, p.1). Michael T. Cooper and Megan Ehrlich, Esquires, represented Petitioner. At the Conclusion of the trial the Jury found Petitioner guilty of Murder. Judge Harrington Sentence Petitioner to life imprisonment for Murder (Ind.# 2013-GS-10-1153) and concurrent sentences of ten (10) years for trafficking in Cocaine (Ind.# 2013-GS-10-1457, and five (5) years for possession of a stolen Vehicle (Ind.#2013-GS-10-2602) and three (3) years for failure to Stop for a blue light (Ind.# 2013-GS-10-2603). (Tr.P. Vol. 5, p. 40 l. 3-P. 41, l. 9). Petitioner appeals his Conviction.

ARGUMENT

The trial Court did err in denying Petitioner's Motion to suppress Kenneth Fludd's out of court identification.

Factual Background

On January 5, 2015 Petitioner appeared before the trial Court on several Motions one being a Biggers Hearing involving the testimony of Kenneth Fludd. Vol. 1. Tr.p. 150-Tr.p. 192, 16.

During the hearing the Court clearly witness Mr. Fludd's inconsistent testimony and his unwillingness to admit the truth when confronted. Vol. 1, Tr.p. 177, 1-23, Tr.p. 178, 6-22, Tr.p. 179, 10-12, Tr. 183, 1-6. Thereafter trial Counsel proffered documents to the court and then provided the trial Court with a Summary argument to which Respondent acknowledged. Vol. 1. Tr.p. 185, 23-Tr.p. 187, 24, Tr.p. 188, 11-17. Trial Counsel then Noted for the record that no law enforcement personnel testified to the procedure while at the same time demonstrating opposition of a contemporaneous nature. Vol. 1. Tr.p. 189, 9-12, Tr.p. 190, 3-4. After hearing the facts and knowing that the testimony of inconsistent statement of any witness could not be received as evidence of any fact touching the issue the trial Court denied Petitioner's Motion to Suppress based upon his opinion rather than the facts of law and supportive evidence. Vol. 1. Tr.p. 191, 12-Tr.p. 192, 15,

The trial Courts denial of Petitioner's Motion to suppress dismantles Petitioner's equal protected due process rights to a defence by effectively precluded the development of true facts and resulted in the admission of false one's to which trial Counsel contended. Vol. 2. Tr.p. 35, 15-Tr.p. 36, 5, Tr.p. 37, 17-24, Tr.p. 50, 4-10, 16-19-Tr.p. 51, 3-4, Tr.p. 52, 4-11, 21-22, Tr.p. 53, 7-18, Tr.p. 57, 2-4, Tr.p. 62, 19-Tr.p. 63, 7, Tr.p. 204, 22-Tr.p. 205, 6, Tr.p. 207, 2-6, Tr.p. 233, 23-Tr.p. 234, 3, Tr.p. 235, 12-15, Tr.p.

Tr.p. 242, 16-25, Tr.p. 243, 1-7, 25-Tr.p. 244, 11. Trial Counsel knowing that Respondent's evidence was prejudice, confusing and a waste of time continued to object. Vol. 3. Tr.p. 12, 12-15, Tr.p. 13, 9-20, Tr.p. 16, 8-9, Tr.p. 107, 16-Tr.p. 108, 7, Tr.p. 120, 3-13, Tr.p. 154, 18-22, Tr.p. 156, 12-18, Tr.p. 163, 17-19, Tr.p. 164, 21-Tr.p. 165, 12, Tr.p. 166, 3-13, 24-Tr.p. 167, 3, 13-14, Tr.p. 184, 19-Tr.p. 185, 3, Tr.p. 188, 17-Tr.p. 189, 5, Tr.p. 193, 2-18, Tr.p. 195, 17-19, Tr.p. 198, 2-5, 13-16, Tr.p. 205, 3-9, Tr.p. 247, 4-10. Trial Counsel knowing that Petitioner was not a murderer exposed the cunning Kenneth Fludd and thereafter rested the defense while reserving all motions and matters including any rebuttal to which where none. Vol. 4. Tr.p. 124, 9-24, Tr.p. 125, 17-19, Tr.p. 139, 16-20. During Summations trial Counsel continued the exposure of the furtive Kenneth Fludd's testimony while Respondent improperly placed the prestige of the united States goverment behind Kenneth Fludd while shifting their burden upon Petitioner. Vol. 4. Tr.p. 162, 2-7, Tr.p. 165, 13-Tr.p. 166, 7, 16-Tr.p. 167, 15, Tr.p. 168 1-5, 11-Tr.p. 169 12, Tr.p. 182, 10-Tr.p. 183, 10, Tr.p. 188, 5-7, 9-11, 14-15, Tr.p. 189, 14-15, Tr.p. 193, 34, 25-Tr.p. 194, 5, Tr.p. 199, 17-23. After Respondent concluded misstating the facts in order to give the false impression of the evidence trial Counsel renewed all of our previously stated motions out of an abundance of caution and then made a contemporaneous objection to which the abusive trial court noted for the record. Vol. 4. Tr.p. 203, 16-Tr.p. 204, 7, Vol. 5. Tr.p. 6, 8-24, Tr.p. 39, 21-25, Vol. 6. 18, 20-Tr.p. 19, 3, Tr.p. 20, 22-Tr.p. 21, 4.

THE APPEAL COURT'S RULING

Opinions which are not printed in the advance sheets are identified as "unpublished", and are given docket Numbers with the designation "up" have no precedential value. Courts Key 107. See Edwards V. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed. 518 (2000) (Effective trial Counsel preserves claims to be considered on appeal.) See. Vol. 6. 4, 17-20 (I placed my objection contemporaneously on the record and the court allowed me to further articulate that objection today.) See Criminal Law Key 1043(2), (In order to preserve an error for appellate

review, a defendant must make a contemporaneous objection on a specific ground). See U.S. V. Young, 105 S.Ct. 1038 ("the plain error exception to the contemporaneous objection is to be used solely in those circumstances in which a miscarriage of justice would otherwise result as in the petitioner's case")

DISCUSSION

The Appeal Court erred in affirming Petitioner's conviction by unpublished opinion. See Vol. 2, 7, 4-Tr.p.8, 12. Note: 9-12 "there was no oral supplement to the search warrants to the Magistrate. Respondent: That's Correct." See Vol.2.8, 13-Tr.p.14, 7. See: Tr.p.12, 16-19, Tr.p.17, 10-12, 22-24

> Trial Counsel: As I stated, the second search warrant is fruit of the poisonous tree under the wrong -- and would not have been obtained but for the product of prior ability to search.
>
> Respondent: So I'm not going to sit here and say that it's a great warrant, because it is obviously a little short. It does make that leap as to why we believe he is the Petitioner, that a witness saw him responsible for the shooting.

See State v Johnson, 318 S.C. 372, 375, 458 S.E. 2d 49, 51 (ct. App. 1995) ("[A] person in fear of his life presumably has a more acute degree of attention to his surroundings than a mere passerby.") See Vol. 1. 186, 6-14 (Note: 7-8, 11-14)

> And then, Your Honor, I think I will argue that the opportunity to view the witness. As Mr. Fludd testified

they're in the house together for forty-five minutes. He's nondescript about where everybody was, but he did say he got to see him there.

See State v Ford, 278 S.C. 384, 386, 296 S.E. 2d 866, 867 (1982) ("Because [the eye-witness] was a victim as apposed to a mere passerby, his degree of attention was presumbly acute."). See Vol. 1. 187, 25, Tr. p. 188, 11-17

Respondent: The opportunity to view, as stated by the witness, was ample, over an hour prior to the shooting, at the time of the shooting. He testified he'll never forget someone's face who pointed a gun at him. I think those stress factors, accompanied with the time and ability and lighting and opportunity had to do with the witness was ample.

See Vol. 4, 184, 17-19, Tr. p. 188, 5-7

The evidence shows that Kenneth Fludd is lying. But the evidence shows that petitioner is truthful.

Respondent: Now, was Kenny honest from the go? No. In the first twenty minutes from when the shooting happened, he made a couple lies.

See Riddle v Ozmint, 631 S.E. 2d 70 (2006) (per curiam) ("The issue is not why [the witness] failed to tell the truth; rather, it is why the Solicitor who knew [the] testimony to be false failed to correct it Id. at 75. Reversal was required because the failure to correct false evidence is as reprehensible as its presentation.")

; U.S. V. Bartko, 728 F.3d 327 (4th Cir. 2013) (Government may not knowingly use false evidence, including false testimony, to obtain a taint conviction, regardless of whether the government solicited testimony it knew or should have known to be false or simply allow such testimony to pass uncorrected.); Miller V. Paste, 87 S.ct 785 (The Supreme court made it clear a defendant can not be convicted on false evidence.).

Rather than correct the false testimony Respondent is clearly seen asking the court to suborn perjury. See Vol. 4. 188, 14-15.

> Respondent: So, I want to talk to you about why you can believe Kenny Fludd.

See Chewning V. Ford Motor company, 354 S.C. 72 (2003) 579 S.E.2d 605 ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court.") quoting Great Coastal Express, Inc., V. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982)

The trial Judge has the responsibility to maintain decorum in keeping with the Nature of the proceeding; "the Judge is not a mere moderator but is the governor of the trial for the purpose of assuring it, proper conduct, Quercia V. United States 289 U.S. 466, 469, 53 S.Ct. 698, 77 L.Ed 1321 (1933). The Judge must meet situations as they arise and [be able] to cope with... the contingencies inherent in the adversary process." Geders V. United States, supra, 425 U.S., at 86, 96 S.ct, at 1334. Of course "hard blows" cannot be avoided in criminal trials; both the prosecutor and defense counsel must be kept within appropriate bounds. Herring V New York, 422 U.S. 853, 862, 95 S.ct. 2550, 2555, 45 L.Ed. 2d 593 (1975)

The Court is clearly seen in this case violating Appellate Court Rule 3.1: and Rule 3.3 (3) and also Rule 8.4 (a) (d) (e) (g).

Like its counterpart in the Fifth Amendment, the Due process clause of

the Fourteenth Amendment was intended to prevent government from abusing [its] power, or employing it as an instrument of oppression, Davidson V. Cannon, Supra, 474 U.S. at 348, 106 S.Ct. at 670; See also Daniels V. Williams, Supra, 474 U.S. at 331, 106 S.Ct. 665 ("to secure the individual from the arbitrary exercise of the powers of government," "and" to prevent governmental power from being "used for purposes of oppression" (internal citations omitted); Parrat V. Taylor, 451 U.S. 527, 549, 101 S.Ct. 1908, 1919, 68 L. Ed. 2d 420 (1981) (powell, J., concurring in result) (to prevent the "affirmative abuse of power"). See Chewning V. Ford Motor Company, 579 S.E. 2d 605 (2003)("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.") quoting H.K. Porter Co. V. Goodyear Tire & Rubber, 536 F.2d 1115, 1119 (6th Cir. 1976), See Vol. 3. 195, 10-13, 17-19, Tr.p. 198, 2-5, 13-16

Brian George: That's Craig Thompson. An
Respondent: And is that the individual who came out and said the gun was his?
Brian George: Correct
Respondent: So you took Craig Thompson to Jail?
Brian George: Yes, Sir, For the gun.

Trial Counsel: Officer George, Petitioner was not there at the scene that day and had nothing to do with any of that, Correct?
Brain George: Correct. Okay. Correct.
Trial Counsel: And Petitioner was not involved with any of that, Your Scene?
Brain George: Not that I'm aware of.

See Vol. 4. 163, 15-16, Tr.p. 199, 17-19, 21-23.

Trial Counsel: Kenny never says he saw Petitioner with a gun before they go in the house.

Respondent: Let me make one more brief comment about Kenny. And you know, I know maybe he didn't come off very likeable. Maybe didn't answer them as straight forward as he should have or should have at times, because, for whatever reason.

Under the equal protected due process rights of the Fifth Amendment we have the right that protects us from self incrimination. See Herman V. Claudy 76 S.Ct. 223 C holds that a conviction following trial or on a guilty plea of guilty based on a confession extorted by violence or by mental coercion is invalid under Federal due process clause.). See Vol. 1, 132, 4-10, Tr.P. 133, 4-5

Respondent: And your K-9 was able to apprehend the Petitioner?

A. That is correct.

Q. And after the K-9 apprehended him, were you right behind him?

A. I was a little ways back, but I always kept visual of the Petitioner and my K-9.

Q. Did you ever see him throw anything?

A. No, I did not.

See Vol. 3. 164, 21 - Tr.P. 165, 10, 12.

Q. Did y'all search the immediate area where the chase took place for any contraband?

A. Yes, we did. We searched the area.

Q. Did you find anything that night?

A. No, I did not.

Q. Did you later become aware that drugs and cell phones were located very close to where this chase took place?

A. Yes, I did.

Q. Tell us about how you came to know that.

A. The Sargent at the time, Sargent Reinwelski, informed me the following day that some contraband was found in the same general area where the Petitioner was caught.

Trial Counsel: Hearsay, Your Honor

The Court: Overruled.

See Marshall V. Jerico, Inc, 100 S.Ct. 1610 (1980) (Due process entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement in adjudication proceedings safeguards the two central concerns of procedural due process the prevention of unjustified or mistaken deprivations and promotion of participation and dialogue by affected individuals in the decision making process. See Carey V. Piplus 435 U.S. 247, 259-262 98 S.Ct. 1042, 1043... (1978) The Mentality requirement helps to guarantee that life, liberty or property will not be taken on the basis of an erroneous or distorted conception of facts or the law. See Matthews V. Eldrige, 424 U.S. 319, 344 96 S.Ct, 893, 907 47 L.Ed. 18 (1976) at the same time it preserves both appearance and reality of fairness," generating the feeling, so important to a popular government that Justice has been done," Joint Anti fascist Committee V. McGrath 341 U.S. 123, 172, 11 S.Ct. 624, 96 L.Ed 817... by ensuring that no person will be deprived of a proceeding in which he may present his case with assurance that the arbiter is not predispose to find against him.). See Vol. 2. 6, 11-18, Tr.P. 36, 2-5.

Respondent: My only concern about not taking the plea before we start the trial is that what if he balks at the plea? If he-- When we try and take his plea he says No--

The Court: Too much talking. We'll get the plea done. Let me hear-- start the search warrant issue. Do we have the sentencing sheets?

Respondent: We do.

The Court: I deny the Petitioner's motion to suppress the evidence obtained under the April 16, 2013 search warrant as it was amply supported by probable cause. Note your exception to my ruling.

The Court was completely aware that Petitioner had a complete defense to Respondent's charges Nevertheless the trial court prevent petitioner from fully exhibiting and trying his case by denying Petitioner the full panoply of protection afforded to criminal defendants by the Constitution.

At this time Petitioner will reiterate Vol. 6, 18, 20-Tr. p. 19, 3.

The trial Court: Are there any other post-trial motions?

Trial Counsel: Your Honor, we move for a New trial. We renew our motion for a direct verdict. We renew all of our pretrial Motions and any and all objections made and ruled against by the Court during the course of trial

The trial Court: Mr. Kidd? (Respondent?)

Respondent: I have Nothing further.

"A felony conviction-like-ambition must be made of sterner stuff." Shakespeare, Julius Caesar, Act III, Scene 2.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's Petition for rehearing with the ultimate relief of vacating or reversing Petitioner's convictions and granting him a new trial consistent facts and laws herein.

Respectfully Submitted,

S/ _____

Petitioner

NOTE: There is no declaration of cooperation to support Respondent's frivolous bad faith argument.

July 28, 2017

CERTIFICATION

I, KAREN SINGLETON, hereby certify that on July 31, 2017, I caused a true copy of Petitioner's Petition for rehearing pursuant to Rule 221 (a) to be served via Lieber Corr. Inst. mailroom with postage prepaid addressed as follows;

Alan Wilson
Attorney General
Attorney General Office
P.O. Box 11549
Columbia, SC 29211-1549

David Alexander, Esq.
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

The Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State V Singleton, 2015-000306

Dear Clerk

PLEASE find enclosed for filing in your court Petitioner's Petition for rehearing pursuant to Rule 221 (a) and a certificate of service. Thank you and good day.

Sincerely
S/ [signature]
Petitioner

July 28, 2017