

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO
Michael Watson, #170712
Applicant
v.
STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
CASE No. 2014-CD-34-195
NOTICE OF APPEAL

RECEIVED

AUG 08 2017

S.C. SUPREME COURT

Michael Watson #170712 hereby appeals the decision [OF THE
ORDER OF DISMISSAL] FROM THE HONORABLE JUDGE ROGER E.
HENDERSON. FROM THE DATE OF 3rd day of MARCH 2017.
Which DENIED Applicant's PCR Application.

C. THE HONORABLE ANITA M. WILLIAMS
Clerk of Court, Marlboro County
COURTHOUSE SQUARE, 105 MAIN STREET
P.O. DRAWER 996
BENNETTSVILLE, SOUTH CAROLINA 29512

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

RECEIVED

AUG 08 2017

S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JUDGE ROGER E. HENDERSON

CASE No. 2014-CP-34-00195

MICHAEL WATSON #170712..... Applicant.

v.
STATE OF SOUTH CAROLINA..... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on
VALENCIE GARCIA GIOVANNOLI ASSISTANT ATTORNEY GENERAL AND
THE CLERK OF COURT ANITA M. WILLIAMS, for THE COURT OF
COMMON PLEAS IN MARLBORO COUNTY by way of
TURBEVILLE CORRECTIONAL INSTITUTIONAL MAILROOM,
ON THE DATE OF 28 April 2017.

s/ Michael K Watson
MICHAEL WATSON #170712
TURBEVILLE Co SC
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 08 2017

APPEAL FROM MARLBORO COUNTY

S.C. SUPREME COURT

Case No. 2014-CP-34-00195

The Honorable Roger E. Henderson

Michael Watson, 170712,

Appellant,

V.

State of South Carolina,

Respondent.

INITIAL BRIEF
OF APPELLANT

Michael Watson, 170712,
TCI
1578 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

South Carolina Attorney General
Mrs. Jessica Kinard, Esq.
Post Office Box 11549
Columbia, SC 29211-1549
(ATTORNEY FOR RESPONDENT)

STATEMENT OF THE CASE

This case derives from a May 7 2002 Incident in which the State alleged that Appellant shot two (2) Individuals and shooting into a dwelling charge. The Appellant stood trial November 8-10 2004, The jury found Appellant guilty of (2) counts of Assault and Battery with Intent to Kill (ABWIK) (2002-GS-34-1774 - 1775) and one (1) count of a Firearm charge (2004-GS-34-1169). The Court sentenced Appellant to 20 years on each (ABWIK) charge to run consecutively, and, 10 years to run concurrently on the firing into a dwelling charge.

A timely Notice of Appeal was perfected. The South Carolina Court of Appeals denied the "Direct Appeal" on October 30 2007. A Writ of Certiorari was denied by the South Carolina Supreme Court on December 19 2007. (As a point of clarity, the Appellant had 30 days in order to file a Writ to the United States Supreme Court from this Final Denial at "Direct Appeal")

The Appellant filed his "First PCR" on May 7 2008, some (140 days later) as 140 days had elapsed this time would not be tolled as the Statute of Limitations would be concerned. The time while this First PCR is pending would However, Toll the Statute of Limitations. Appellant's First PCR Hearing was held on September 16 2010 and the PCR Court ultimately denied this First action by Order dated December 7 2010. Tommy A. Thomas, Esquire, Counsel for Appellant at PCR did timely file the Notice of Appeal and asked the Court to be relieved as Counsel. As a Result, Appellant Counsel was appointed from Indigent Defense. Counsel filed a Johnson Petition along with Appellants Pro-Se Brief. This Writ of Certiorari was denied by Order Dated April 9 2014, and the Remittitur was issued April 25 2014 Compare Easterwood v. Champion

STATUTE OF LIMITATIONS

After this First PCR Action was ultimately decided by South Carolina's Highest Court. Counsel gave Appellant his "Discovery" with a dated letter (April 22 2014), which exposed Appellant to the evidentiary fact that one of the States witnesses

(Tavon Littles) just (12) days after the shooting was found in possession of a 9 mm hand gun interestingly the same caliber used in the earlier May 7 2002 shooting. After Discovery of this evidentiary fact on July 21 2014 Appellant filed this second PCR action or (87 days after both actual discovery)

In all, As it relates to the Statute of Limitations only (227 days) had elapsed as it relates to the Statute of Limitations. In all, The Statute of Limitations decision by the PCR Court is Clearly Erroneous.

SUCCESSIVENESS

As it relates to the Successive argument the Appellant only used (87 days) after actually discovery of his truly Newly Discovered Claim that could not have been discovered compare Easterwood v. Champion 113 F.3d. 1231.

The Appellant would contend essentially two arguments as it relates to the Successiveness decision. 1) The Appellant would contend that his case would fall under one of the Three exception enunciated in Matthew v. Evatt 105 F.3d. 907, and, 2) That because this evidence was only discoverable after Counsel send the witnesses conviction which specified that he was caught with a "9 mm" handgun, and because it was not discoverable by the exercise of Due Diligence, this action should be allowed as provided in South Carolina Code Ann. § 17-27-45 (C).

1.

In Matthew v. Evatt Supra, Our Fourth Circuit Court of Appeals has indicated that South Carolina will entertain Successive PCR Applications in three circumstances.

1. Where there exist Procedural Irregularities , or,
2. Where Counsel did not differ from that at trial, or,
3. Where Applicant prepared his PCR Application without the benefit of Counsel.

When Applicant here, Requested, and prepared his PCR Counsel all without the benefit of Counsel. When Applicant filed his First PCR, Counsel was ultimately retained but Retained Counsel did not alter or substantially amend his Application. Futher, When the evidentiary fact came to light that he had in his possession that one of the Witnesses (Tavon Littles) not only had a firearm charge, but he had the same type of weapon alleged in this case just 12 days after the shooting "9 mm. Handgun". The Trial jury viewing the two witnesses that testified at trial both giving conflicting testimony about what transpired and one of those witnesses not only being charged with and convicted of a shooting incident that occurred just 12 days after this incident. But, the "Witness" (Tavon Littles) here used a "9 mm. Hand gun." Had Ballistics been conducted on both the shell casings and/ or bullets retrieved from the victims in this case and compared against the handgun retrieved from the "Witness" (Tavon Littles) evidence would have come to light that he (Tavon Littles) was the shooter. The trial jury faced with the inconsistent testimony, this evidence and test would have reasonable changed the outcome of the proceeding. That is a reasonable probability that would have undermined the confidence in the outcome of the proceeding.

Where Appellant plead Not Guilty, and no Weapon was recovered from Appellant, Where this same Individual was present at the May 7 2002 Incident, There is a Reasonable Probability that is a Probability that would undermine the confidence in the outcome that the trial jury would have reasonable concluded that Appellant did not committ the crimes alleged at trial and that the trial jury would have concluded that "Witness" (Tavon Littles), was armed with a handgun, 9 mm, or the same as used in this May 7 2002 incident. As the evidence here could not have been discovered until Appellant had received the April 22 2014 Discovery from his PCR Counsel (Tommy A. Thomas, Esq.) due to the Nature and circumstances of the case here, this would fall clearly under the Newly Discovered Evidence Claim as set out in S.C. Code Ann. § 17-27-45 (C) and comparing Easterwood Supra the ruling of the PCR Court should be reversed.

BELCHER ARGUMENT

As the Trial Court correctly pointed out, That the jury was the "Finder of Facts, but he (The Judge) was the Judge of what the Law was." [You take the Law that I will give you and apply to these facts and, thus, reach a verdict.] [T.Tr. pg. 39 lns. 10-11] At the time that this case went to trial November 8-10 2004, The Law allowed a trial Judge to "Charge" the jury that they could "Infer" Malice through the use of a Deadly Weapon. Specifically: [I Charge you the use of a Deadly Weapon permits you to infer but it does not require you...it doesn't require you to infer Malice either. Now, While Malice may be inferred from the use of a deadly weapon, Where Circumstances relating to the homicide are brought out in any evidnece, this inference vanished and the burden is on the State to prove Malice by evidence staisfying the jury Beyond a Reasonable Doubt, and it can or will be observed, Ladies and Gentlemen, that there

Must be a Malice Aforethought in these crimes that I have defined to you.] (T.Tr. pg. 368 Lns. 14-22]

While the First PCR was pending, in 2009 Our South Carolina Supreme Court in Belcher how South Carolina had gotten off point in their Jury Charge and how that charge had impermissible invaded the province of the Trial jury's role of "Finders of Facts" that South Carolina in essence had been incorrectly Charging Trial Juries for over 100 years. However, The Court in Belcher, the Court only applied the holdings here to cases that had not become final or were still on Direct Review.

The Appellant here would content that because this issue also applied to the offense of "Assault and Battery with Intent to Kill" due to the Malice element it would apply here. This only became available after the South Carolina Supreme Court came out with their ruling in Belcher in 2009, while Appellant's case was pending at the PCR level. He would have not been previed to the holdings here.

As the long standing holding that the Trial Judge is the Judge to declare the "Law", and, the Trial Jury is the Finders of Fact. And as instructed here, The Jury decided the facts but applied them to the Law that this Court Instructed see T.Tr. pg. 39 lns. 10-11).

Lastly, Had the three (3) casings, and the Bullet been compared to the 9 mm handgun retrieved in a later crime committed by Travon Little), Ballistics test would have conclusively proved that the bullets found at the scene of this case came from (Tavon Little), i.e. the gun retrieved from him just some 10 days after the incident in this action.

When the Trial Jury faced with conflicting testimony, and the credibility of those witnesses suspect at best, coupled with the fact that every claimed not to have a gun, and one of the witnesses, who interestly, was not shot was found with the same caliber handgun as claimed to have been used in this shooting. A reasonable mind would have concluded that Tavon Little was responsible for the shooting.

CONCLUSION

Based on the foregoing, Appellant Prays that this Court Reverse and Remand the PCR Court's Decision. Granting Appellant an evidentiary hearing, Appointment of Counsel and the Ordering of a Ballistics test against the shell casing and bullets removed from the victims and Building structure and compare them against the 9 mm Handgun retrieved from (Tavon Littles), or any other remedy that this Court deems just and proper.

Respectfully, Submitting,

Michael K. Watson

Michael Watson

This 27 day of JUNE, 2017.

Subscribed and sworn to before me this
27th day of June, 2017.
[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 5-18-26

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

April 22, 2012

Michael Watson #170712
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Watson,

Enclosed please find the contents of your PCR file. I did not keep any copies of this per your conversation with Jackie. This is the only copy of your transcript that we have and we do not have a copy of it because it is still bond.

The reason that you are not receiving the newsletters is because you are in SMU and Corrections will not issue them to SMU inmates. We have no control over that.

Thank you for your letter and we wish you luck in the future.

Sincerely,

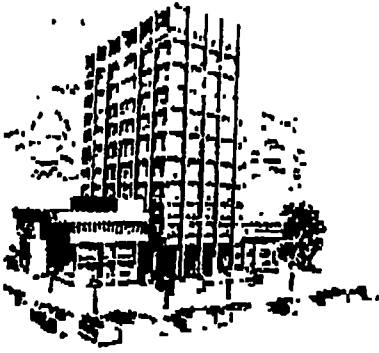


Tracy Sutton
Secretary to Tommy Thomas

Enclosures

A CERTIFIED
TRUE COPY

William B. Zundel
CLERK OF COURT
MARLBORO COUNTY



CONNIE REEL-SHEARIN
CLERK OF COURT
CITY-COUNTY COMPLEX
180 N. IRBY STREET, MSC-E
FLORENCE, SC 29501
843-665-3031

DATE: 06/03/10

NUMBER OF PAGES TRANSMITTED INCLUDING COVER SHEET 5

TO: Jacquelyn E. Miller

FAX # 1-803-781-4226

FROM: _____

OUR FAX NUMBER 843-665-3097

COMMENTS OR SPECIAL INSTRUCTIONS:

A CERTIFIED
TRUE COPY

William B. Zunderbush

CLERK OF COURT
MARLBORO COUNTY

WITNESSES
CPL. DAVID MILLER SCHP

Hicks

PROS: CMS

D/O: 05-19-2002

ARREST WARRANT NO.
H032155 (1)

ACTION OF GRAND JURY
TRUE BILL

Lynnda W. King
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2002 - GS - 21 - 01254

The State of South Carolina,

County of FLORENCE

CMS

COURT OF GENERAL SESSIONS

SEPT TERM 2002

THE STATE

vs.

TAVON LITTLES *7D-5455*

Indictment for

POSSESSION OF PISTOL BY PERSON
UNDER TWENTY-ONE YEARS OLD

ARREST WARRANT

1-012155

STATE OF SOUTH CAROLINA

County of Laurens

THE STATE

Tavon Little

Address: 103 Villains St. Laurens SC 29512

DOB: 03-25-84 Agency Off: Race: Height: 5'6" Weight: 140

Prosecuting Agency: Prosecuting Office: Offense: Unlawful poss. of a firearm

Offense Code: 16-23-30

Code/Ordinance: 16-23-30

The warrant is CERTIFIED FOR SERVICE in the County of Laurens

To accused is to be arrested and brought before me to be dealt with according to law

Signature of Judge (LS.)

RETURN

A copy of this arrest warrant was delivered to defendant Miles TAYLOR

on 05-19-10

Signature of Probation/Parole Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County of Laurens

AFFIDAVIT

Personally appeared before me the affiant Lee K. Fisher being duly sworn and says that defendant Tavon Little did commit this crime on 5-19-02 in the following place: Laurens

DESCRIPTION OF OFFENSE: Unlawful poss. of firearm 16-23-30

I further state that there is probable cause to believe that the defendant named above committed this offense because based on the following: On the above date and time, the 20 did stop vehicle and driver in Laurens County for an equipment violation. Mr. Tavon Little, a passenger in the vehicle found to unlawfully have in his possession a .9. Unlawful possession of a firearm in violation of S.C. Code of Laws. This incident occurred at approximately 020 hours 5-19-02.

Sworn to and subscribed before me on 5-19-10

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

County of Laurens

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY IN CHARGE OF THE

on 5-19-10 I appear for the above affidavit that there are probable grounds defendant Tavon Little

did violate the criminal law of the State of South Carolina (or ordinance of County of Laurens) as set forth below:

DESCRIPTION OF OFFENSE: Unlawful poss. of firearm

Now, therefore, you are empowered and directed to arrest the addressee and bring him before me forthwith according to law. A copy of this arrest warrant shall be delivered to the defendant, the sheriff, or as soon thereafter as is practicable

Signature of Judge (LS.)

Judge's Address

Judge's Telephone

Issuing Court: County of Laurens

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

**POSSESSION OF PISTOL BY PERSON UNDER
TWENTY-ONE YEARS OLD**

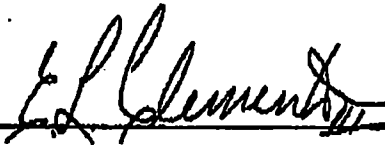
At a Court of General Sessions, convened on SEPT 05, 2002, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - POSSESSION OF PISTOL BY PERSON UNDER THE AGE OF TWENTY ONE

That TAVON LITTLES did in FLORENCE County on or about May 19, 2002, violate Section 16-23-0030(c) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully have in his possession or on his person an unlawful pistol, he being under the age of twenty-one.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

**A CERTIFIED
TRUE COPY**

William B. Sunderbank
**CLERK OF COURT
MARLBORO COUNTY**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

STATE VS.

TAVON LITTLES

AKA:

Race: Black Sex: Male Age: 18

DOB: 3/25/84 SS#:

Address: 103 Williams St Bennettsville, SC 29512

DL# SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

02 -GS- 21 - 1254

A/W#: H-032155

Date of Offense: 5/19/02

S.C. Code §: 16-23-30(c)

CDR Code #: 2131614

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Unlawful Carrying of Pistol (1 year or \$1,000.00)

In violation of § 16-23-20 of the S.C. Code of Laws, bearing CDR Code # 010414

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signatures] Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ - - ; provided that upon the service of - - days/months/years and/or payment of \$ - - ; plus costs and assessments as applicable*; the balance is suspended with probation for 1 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for days/months jail time. CONCURRENT or CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered Total: \$ plus 20% fee: \$ Payment Terms: set by SCDPPPS

PTUP days/hours Public Service Employment Obtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 2000 beginning 10/19/02 \$ paid to Public Defender Fund. Other: [Handwritten note] TRUE COPY

Table with columns for Recipient, Fine, and various assessment codes (e.g., \$14-1-206, \$14-1-211(A)(1), \$14-1-211(A)(2), \$56-1-2995, 3% to County) and their corresponding amounts.

Clerk of Court Deputy Clerk [Signature]

William B. [Signature] PRESIDING JUDGE Judge Code: CLERK OF COURT Sentence dated: [Date]

Court Reporter: [Signature] White - Clerk Green - Corrections

Canary - Probation Pink - Defendant

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 09 2017

APPEAL FROM MARLBORO COUNTY

Referred to James PB

Case No. 2014-CP-34-00195

Answered _____

The Honorable Roger E. Henderson

Michael Watson, 170712,

Appellant,

V.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I Certify that I have served my (Initial Brief of Appellant) on Respondent's Counsel of Record: South Carolina Attorney General's Office, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549 by Depositing the same in the United States mail, Postage prepaid on this:

This 27 Day of JUNE, 2017.

Michael K Watson
Michael Watson, 170712,

SENT TO:

South Carolina Attorney General's Office
Alan Wilson, Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

Subscribed to and subscribed before me this
27 day of June, 2017
Paul H. [Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 5-18-26

Michael Watson, 170712
TCI SB-270
1578 Clarence Coker Hwy.
Turbeville, SC 29162

LEGAL MAIL

South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

