

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 27 2017

S.C. SUPREME COURT

Certiorari to Richland county
Honorable G. Thomas Cooper, Circuit court judge

Taurus Watts Petitioner,

v.

State of South Carolina Respondent.

Appellate case NO. 2016-000500

Appellants - Final Brief

DATE: Sept 27, 2017

Taurus Watts # 324820
Taurus Watts # 324820
4460 Broad River Rd.
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Pro se litigant

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in failing to find that the Appellant received ineffective assistance of counsel, in that counsel failed to present a defense, failed to move to sever, and failed to question members of the jury on their impartiality?

STATEMENT OF THE CASE

The Appellant was indicted in August 2007 in Richland County, along with Tremain Wray. Indictment. The Appellant was charged with murder (case number 2007-GS-40-5913). Indictment.

On October 5, 2009, the Appellant and Wray proceeded to a jury trial in the Richland County Court of General Sessions before the Honorable J. Michelle Childs. A guilty verdict was returned on October 15, 2009. Verdict. The Appellant was sentenced to a thirty-five year term of incarceration on the same day that the verdict was returned. Judgment.

The Appellant pursued a direct appeal, arguing: (1) the trial judge erred in refusing to declare a mistrial when the prosecutor through improper leading questions, insinuated that the witness was scared to talk with police and told an investigator that they were going to her killed, implying that she was afraid of the Appellant and his co-defendant; and (2) the trial judge erred in refusing to declare a mistrial when a State's witness testified that he saw the co-defendant and the Appellant in the "holding tank" after he had been specifically instructed by the judge not to testify as to seeing the Appellant in a holding cell. Appellant Brief. In an opinion issued on June 1, 2012, the South Carolina Court of Appeals affirmed the lower court (appeal number 2012-UP-381). Opinion, 6/1/12. The remittitur was issued on August 10, 2012. Remittitur.

On May 30, 2013, the Appellant filed an application post-conviction relief in the Richland County Court of Common Pleas. Post-conviction Application. The Appellant argued that trial counsel provided ineffective assistance in failing to present a defense, failing to move to sever, and failing to question members of the jury on their impartiality. Post-conviction Application. An evidentiary hearing was held on December 10, 2015, in which the Appellant testified. The application was dismissed on March 4, 2016.

Appendix p.1843. The court found that Kamelah Wilson, who would have testified that she was at the club on the evening at issue, was not a credible witness. Appendix p.1838. Wilson would have testified that she did not observe the Appellant at the club and that the club owner, Ricky Jacobs, was across the street from the club at the time of the shooting and could not have witnessed the shooting. Appendix p.1838 at 5. At best, Wilson's testimony merely impeached Jacob's testimony. Appendix p. 1838 at 5. Further, counsel was not ineffective in failing to call Deputy Weldon Gregory to testify. Appendix p.1839 at 6. Gregory took Jacobs' statement at the crime scene, with Jacobs stating that two men who were denied entry to the club were driving the white Nissan at issue. Appendix p.1839 Exhibit (1) p.1844. The court found that Jacobs was thoroughly cross-examined, thus alleviating the need for Gregory's testimony. Appendix p.1839. Regarding the failure to move for severance, counsel's post-trial statement that she could have moved to sever was not given credence by the trial court, as the Appellant was not prejudiced by a joint trial. Appendix p.1890. The court found that the claim regarding juror partiality rested on speculation, as no evidence was presented that any other juror overheard Juror Number 36's biased statements regarding the Appellant. Appendix p.1842.

The Appellant filed a timely notice of appeal. Notice of Appeal.

FACTS

The events giving rise to this case occurred on June 30, 2007. Transcript, volume 2 at 20-25. On said date, Demuria Hank Johnson was shot in the leg outside of the H&J Club, a night club in Columbia South Carolina. Transcript, volume 2 at 20-25. Johnson died as a result of the gunshot wound. Transcript, volume 2 at 20-25.

Johnson went to the club with Travis Malone, James Goodwin, Stephanie Boston, Verda Roberts, and Charlie Bates. Transcript, volume 2 at 20-25. The group arrived at the club between 1:00 a.m. Transcript, volume 2 at 20-25. At some point, a fight broke out inside the club as two men approached Bates as he danced with Jalicca Lisa Johnson. Transcript, volume 2 at 141. The owner of the club decided to close the club for the evening after the fight broke out. Transcript, volume 3 at 33-35.

Lisa Johnson testified that she arrived at the club at approximately 3:00 a.m. on the date at issue. Transcript, volume 2 at 239. Johnson knew the Appellant, because he is Johnson's nephew's uncle. Transcript, volume 2 at 235. Johnson was approached at the club by an unknown male known as "T-something." Transcript, volume 2 at 243, Johnson then went to the dance floor, where she was approached by Bates. Transcript, volume 2 at 240-241. Bates and Johnson had previously dated. Transcript, volume 2 at 240-241. "T-something" approached Johnson again. Transcript, volume 2 at 244-246. "T-something" and Bates had a disagreement, and Bates threw a drink on "T-something." Transcript, volume 2 at 244-246. The bar room fight started. Transcript, volume 2 at 244-246.

After the club closed, the club owner, Ricky Jacobs, witnessed the Appellant and co-defendant Tremain Wray approach the club. Transcript, volume 3 at 37-38. The two men returned to a tan Suburban, with Wray in the driver's seat. Transcript, volume 3 39-40. According to the club owner, the Appellant possessed a firearm. Transcript, volume 3 at 40. The vehicle drove toward Farrow Road. Transcript, volume 3 at 46. According to the club owner, shots were fired from the driver's side of the vehicle toward the club. Transcript, volume 3 at 46. Shots were also fired from a white Isuzu Rodeo as it was leaving the club. Transcript, volume 3 at 46-50. Johnson was struck by a bullet, causing his death. Transcript, volume 3 at 255; Transcript, volume 6 at 145.

Shortly after the shooting, officers stopped the Rodeo. Transcript, volume 3 at 207. Inside the vehicle, police found one round of .38 caliber ammunition and several rounds of 9 millimeter ammunition. Transcript, volume 3 at 207. At the hospital, police recovered a fired 9 millimeter bullet from the pants of the deceased. Transcript, volume 3 at 255; Transcript, volume 6 at 145.

In May 2009, Brian Watson, who was incarcerated for committing an armed robbery, claimed to have information regarding the shooting at issue. Transcript, volume 4 at 253. Watson testified that on June 30, 2007, he looked out his back door and saw a truck at his niece's, Rashonda Simpson's, house. Transcript, volume 4 at 253. Jarrell Dansby, Simpson's husband at the time, called Watson and asked him to come to the house. transcript, volume 4 at 253. Dansby showed Watson a bag with a firearm contained therein. Transcript, volume

4 at 253. Watson, Simpson, and Dansby drove to a creek and disposed
of the firearm. Transcript, volume 4 at 257-260.

Dansby testified that on the Saturday before July 4, 2007, his
cousin, Wray, called and asked if he could leave a firearm at Dansby's
residence. Transcript, volume 4 at 178. In exchange for Dansby's
testimony, a warrant was withdrawn charging him with being an
accessory to murder after the fact. Transcript, volume 4 at 174.

I S S U E 1:

Is there any evidence of probative value to support the Court's determination that trial Counsel was not ineffective in failing to call witnesses and submit evidence to support the defense theory ?

Trial Counsel was ineffective in failing to call Deputy Gregory as a witness to establish that the step's sole eye-witness Ricky Jacobs, initially did not indentify Petitioner or his co-defendant name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side description that noticed two other individuals who are stopped shortly after the shooting took place driving a white Isuzu Rodeo SUV in which ammunition consistent with shell casing found at the scene of the shooting were found. There is a reasonable probability that, but for Counsel deficient performance, the result of the proceeding would have been different. While Counsel challenged statements Jacobs made to investigator McRose, Counsel failed to challenge the critical inconsistencies between the initial statement given to Deputy Gregory, and Jacobs trial testimony.

Jacobs initial statement to Deputy Gregory presents an even stronger third party guilt defense than the third party guilt evidence trial Counsel failed to raise in the case of Miller v. State, 379 S.C. 108, 665 S.E. 2d 596 (2008). As in Miller, there is no probative evidence to support the PCR Court's decision to discuss Petitioner Watts application. Ricky Jacobs testimony on both direct and cross-examination was false perjured testimony that was material to the outcome and directly

upon my guilt. The Solicitor's Office violated my Due Process Rights when it failed to correct what they knew to be false. See RIDDLE v. OZMINT, OPINION No. 26153, May 22, 2006 - Supreme Court, 631 S.E. 2d 70. (holding; State was obligated to correct (key witness) false testimony in Capital Murder trial that he had not spoken to anyone other than that police officer to whom he had given initial statement, when solicitor knew that (very witness) had given second statement to police...) (Reversal required because "the failure to correct false evidence is as reprehensible as it's presentation.")

See also Napue v. People of State of Ill., 79 S.Ct. 1173 (holding; The prosecution's knowing use of false evidence violates due process, regardless of whether the evidence goes to a substantive issue or merely to the witness credibility.

It is of no consequence that the falsehood bore upon the witness credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what it's subject and if it is in anyway relevant to the case; the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.)

See also U.S. v. Agurs, 96 S.Ct. 2392 which states: The Supreme Court has "Consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." This rule] seems to also apply whether the prosecution knew of the perjury or merely "should have known" of the perjury.

I S S U E 2:

Is there any evidence of probative value which supports the PCR Court's conclusion that Counsel was not ineffective for failing to present a defense in that Counsel

failed to present Kamelah Wilson as a witness?

In the instant case, former Counsel's investigation into potential defense was so deficient that he failed to recognize the obvious facts necessary to support the Appellants claim of innocence. Specifically, Counsel failed to call Kamelah Wilson as a witness. Wilson could have testified that she was at the club at the evening at issue, and did not see the Appellant therein. Appendix Transcript, 33 Wilson would have testified that Jacobs was across the street from the club at the time of the shooting and could not have seen the shooting from his vantage point. Appendix Transcript, 35 obviously, Wilson testimony cast doubt as to Jacobs testimony. Jacob was the only witness who testified that the Appellant was armed. Transcript, volume 3 at 40. Jacobs was the only witness who stated that the Tan Suburban was involved in the shooting. Transcript, volume 3 at 46. If Jacobs testimony would have properly been portrayed as being incredible, a conviction would not been obtained herein.

Former Counsel's action with respect to the presentation of a defense in this case were objectively unreasonable, and resulted in significant prejudice to the Petitioner, that he was convicted upon testimony that was not credible. Therefore, Counsel was ineffective in violation of the Petitioner's Sixth Amendment rights. Unfortunately, the lower Court disagreed with this assessment.

The Court found that Wilson was not credible witness, though no reason is offered to support this conclusion. Appendix p. 1838. Further, the Court found that Wilson's testimony would only have served to impeach that of Jacobs. Appendix p. 1838. Such is often the purpose of defense witnesses.

After all, Jacobs was the only witness who testified as to the Appellant's alleged

involvement in this matter, rendering Jacobs an unbelievable witness would seem to be the only viable defense strategy. Clearly, impeachment of Jacobs is at the crux of this case.

The Appellant submits that impeachment rarely can be done by examination of the witness at issue, as the witness is unlikely to admit that he is lying. It was only through the testimonies of Wilson and Gregory, and only via cross-examination of Jacobs, that Jacobs could have been impeached, Counsel's failure to take such steps rendered his performance ineffective.

I S S U E 3:

Is there any evidence of probative value which supports the PCR Court's conclusion that Counsel was not ineffective for failing to move to sever the Appellant's trial from that of co-defendant Wray?

Where the offenses charged in are "of the same general nature involving connected transactions closely related in kind, place and character, the trial Judge had the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." State v. Simmons, 352 S.C. 342, 350, 573 S.E. 2d. 856, 860 (Ct. App. 200)." Offenses are considered to be of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together." Id.

"A severance should be granted only when there is a serious risk that a joint trial would comprise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant guilt." State v. Walker, 366 S.C. 643, 657, 623 S.E. 2d. 122, 129 (Ct. App. 2005). An sample of a specific trial right that may be prejudiced from a joint trial of the Constitutional Right to cross-examination when one co-defendant's confession expressly implicates another

Co-defendant but, the confessor does not take the witness stand. Burton v. United States, 391 U.S. 123, 135-37, 88 S.Ct. 1620 20 L. Ed. 2d 476 (1968).

Herein, defense Counsel failed to sever the Appellant's trial from that of co-defendant Tremaine Wray, a failure that Counsel admitted was a mistake. Severance should have been requested, as the defense of the Appellant and Wray were inherently antagonistic. Wray and the Appellant entered a vehicle with Wray being the driver, Transcript, Volume 3 at 39-40. Jacobs testified that shots fired from said vehicle were fired from the driver's side. Transcript, Volume 3 at 46. Later, it was Wray who was involved with the disposal of the firearm at issue. Transcript, Volume 4 at 178. With Wray acting as the assailant herein, and no evidence linking the Appellant was painted by the jury with the same broad brush of guilty as applied to Wray. Accordingly Counsel should have moved to sever the Appellant's trial. So how can the State say if my attorney would have made the Motion it would have been denied, they were not the Judge.

I S S U E 4:

Is there any evidence of probative value which supports the PCR Court's conclusion that Counsel was not ineffective for failing to move to question members of the jury on their impartiality?

Clearly, juror are susceptible to outside influences, such as were present herein. Juror Number 36 was heard stating that he would convict the Appellant, prior to the jury instructed to deliberate. Number 36 was questioned, and removed from jury. Defense Counsel did not move to question the remaining jurors regarding whether juror number 36's comments had been overheard. Such renders Counsel's conduct

below any objective standard of reasonableness, as Counsel had a duty to protect the Appellant Fundamental Constitution Right to an impartial jury. The Appellant was prejudiced by such unreasonable conduct, in that he was convicted by a biased jury, not upon the facts in this case.

In denying this claim, the lower Court found that the questioning of juror Number 36 was sufficient to alleviate any concern that other jurors over heard his biased comments. Clearly, such is faulty reasoning. How juror Number 36 can be aware of what every other juror heard is a mystery.

Juror Number 89, who reported juror Number 36's malfeasance, obviously heard the biased comments. Absent questioning of the remainder of the jurors, it is unknown how many jurors heard the comments of issue, and how such comments affected the jury.

As Counsel failed to move to question the jurors, and failed in the above put forth manners, the Appellant submits that the decision of the lower Court denying his application for post-conviction relief must be vacated, and this matter must be remanded for rehearing consistent with the findings of this Court and the Constitution Principles of fair play and substantial justice. It was no evidence presented because the judge never questioned the other jurors to see if anyone else heard what was said by juror Number 36.

This Court is free to decide question of law-in this case whether the lower Court incorrectly denied the Appellant's post-conviction Motion with no particular deference to the lower Court. See S.C. Const. art. v, §§5 and 9; S.C. Code Ann. §§ 14-8-200(Supp. 1999); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320,

534 S.E. 2d. 672 (2000).

The Appellant submits that he received ineffective assistance of counsel during trial proceedings. The Sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the assistance of Counsel in presenting their defense. U.S. Const., amend. VI; see also S.C. Const., I, §14. The Sixth Amendment is applicable to the States through the Fourteenth Amendment of the United States Constitution. U.S. Const., amend. XIV; State v. Mizzell, 349 S.C. 326, 563 S.E. 2d. 315 (2002). The Supreme Court has stated, "[t]he right to Counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." Kimmelman v. Morrison, 477 U.S. 365, 374 (1986). Further, the Supreme Court has recognized that "the right to Counsel is the right to the effective assistance of Counsel." McMann v. Richardson, 397 U.S. 759, 771 (1970).

To determine whether Counsel has failed below the minimum standard needed for effective assistance of Counsel under the Sixth Amendment to the Constitution, a two prong test must be met. Strickland v. Washington, 466 U.S. 668, 668-694 (1984), the Supreme Court held that a determination of ineffective would be conditioned on two factors: (1) Counsel's performance must have fallen below an objective standard of reasonableness; and (2) there must be a reasonable probability that, but for Counsel's errors, the results of the proceedings would probably have been different. South Carolina has adopted the Strickland, standard. See e.g. Cherry v. State, 300 S.C. 115, 386 S.E. 2d. 624 (1989). The right to effective assistance of Counsel may be violated by even an isolated error of Counsel if the error is sufficient egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expend

every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest." Frazer v. United States, 18 F. 3d. 778, 785 (9th Cir. 1994). Defense Counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; Keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States Ex. Rel. Partee v. Lane, 926 F.2d 694, 702 (7th Cir. 1991).

CONCLUSION

For the reason stated, this Court should reverse the Judgment of the Circuit Court.

Respectfully submitted,

Taurus Watts #324820

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Date: Sept 22, 2017

The Supreme Court Of South Carolina
The Honorable Daniel E. Shearouse,
Clerk Of Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

Enclosed please find for filing and processing with your office.
A Final Brief of Certiorari, that is already on file with your
office. Please file the original copy of this motion and return
a copy of the same to me with file date stamped thereof.

Respectfully Submitted,

S/ Taurus Watts #324820
Taurus Watts, # 324820
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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Taurus Watts,Petitioner,

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State of South CarolinaRespondent.

Case NO. 2016-000500

CERTIFICATE OF SERVICE

I, Taurus Watts, # 324820, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Final Brief that I know the contents thereof, that it includes every fundamental Law of this state that guarantee the offense to me for correcting setting aside or vacating the conviction and sentence attacked in this Final Brief; and that the matter and allegations therein set fourth are true. That I have served copies of the same documents upon the below party upon this same date.

Enclosed The Supreme court of South Carolina

cc: The Honorable Daniel E. Shearouse,

Clerk of Court

Post Office Box 11330

Columbia, SC 29211

Sworn to and subscribed before me
this 22nd day of September 2017

Janelle T. Spearman
Notary Public For South Carolina

My Commission Expires: _____

S/ Taurus Watts #324820

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JANELLE T. SPEARMAN
Notary Public-State of South Carolina
My Commission Expires
August 26, 2025