8-8-2017

LARRY J. TYLER
2349 ROGERS RD.
DARLINGTON, S.C. 29532

S.C. SUPREME COURT
BOX 11330
COLUMBIA, S.C. 29211

DEAR CLERK,

Please file this amended brief in the court for me, and if possible provide me a clocke stamped copy in return.

Thank You sincerely,

Mr. Larry J. Tyler

RECEIVED
AUG 15 2017
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

LARRY JAMES TYLER

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2016-002364

MOTION TO AMEND BRIEF

APPELLANT, LARRY JAMES TYLER, REQUEST LEAVE TO FILE AN AMENDED COMPLAINT ADDING PARTIES AND CLAIMS.

2. SINCE THE FILING OF THE ORIGINAL BRIEF THE APPELLANT HAS DETERMINED THAT THE NAMES OF ASSISTANT SOLICITOR JOHN W. HOLT, AND PATTI MCKENZIE PARKER, ASSISTANT SOLICITOR, AND THEIR ACTIONS AGAINST THE APPELLANT.

3. THIS COURT SHOULD GRANT LEAVE FREELY TO AMEND HIS BRIEF. FORMAN V. DAVIS, 371, 178, 182, 83 S. Ct 227 (1962); WILLIAMS V.

CARGILL, INC., 159 F. SUPP. 2d 984, 997-98 (S.D. OHIO 2001).

DATE _____

RESPECTFULLY SUBMITTED,

LARRY S. TYNER
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DARLINGTON, S.C. 29532

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APPELLATE'S AMENDED BRIEF

PROSECUTORIAL MISCONDUCT

4. THE APPELLANT ADDS ASSISTANT SOLICITORS JOHN W. HOLT AND PATTI MCKENZIE PARKER TO HIS BRIEF.

After receiving the warrants and indictments for the first time in June of 2016 from my request to my P.C.R. public Defender, & learned for the first time in the arresting officer Eric Hodges affidavits claim the appellant is nude in the photos found on the cell phone that he gave to minors.

The appellees ours witnesses testified in trial the appellant was not nude in photos, but was wearing some briefs. SEE TRANSCRIPT, PG. 55 LINE 10, 13, 16, PG 65, LINE 22, 23.

Even the alleged indecent text message the appellant was claimed to have shown the victims to read is none proven at trial that it was never read by the alleged victims. PG. 59, LINE 22.

A reviewing court may grant relief for "plain error" even if the error was not raised and preserved at trial or sentencing when the defendant can show clear or obvious substantial rights violation has occured. U.S. V. CASTRO, 704 F.3d 125, 137-41 (3d CIR. 2013) (plain error because prosecution failed to prove an essential element of the charged offense); U.S. V. McQUEEN, 108 F.3d 64, 66.

(4TH CIR. 1997); U.S. V. SPINNER, 152 F.3d 954, 956 (D.C. CIR. 1998) (plain error because government failed to present any evidence on essential element of crime); U.S. V. KINSELLA, 622 F.3d 25, 83 (1ST. CIR. 2010) (plain error review when defendant failed to make timely objection to prosecutorial misconduct.

The prosecution withheld the evidence favorable to the defendant that officer Eric Rodgers was the only one that told the grand jury the appellant was nude in the photos the minors looked at. The prosecutor indicted the appellant with invalid indictment, then use the just invalid warrants and indictment to illegally obtain seizure warrants. U.S. V. GAUDIN, 515 U.S. 506, 522-23 (1995) (courts failure to submit issue of materiality to jury in prosecution for making false statements deprived defendant of right to demand that jury find defendant guilty of every element of crime charged); FED. R. CRIM. P. 12(e) U.S. V. RUSSELL, 411 U.S. 423, 432 (1973); MONROE V. ANGELONE, 323 F.3d 286, 317 (4TH CIR. 2003) (10 pieces of undisclosed evidence material because would have impeached key prosecution witnesses and

undermined proof of premeditation and malice); U.S. V. PAYNE, 63 F.3d 1200, 1209-11 (2d CIR. 1995)

6. PROSECUTORIAL MISCONDUCT

The openings statements to evidence that they intend to offer and believe will be admissible was proven by their own witnesses to be false. SEE PG. 32, LINES 12, 22, 34 LINES 15, 16.

The prosecutors apply their own personal opinion in several places in the opening and especially closing statements accusing the appellant of a crime where there is no record.

U.S. V. LIZARRAGA, 445 F.3d 23, 86-87 (1ST CIR. 2006) (prosecutor's opening statement improper because it contained 3 remarks not supported by evidence); GOV'T OF VIRGIN ISLANDS V. TURNER, 409 F.2d 102, 103 (3d CIR. 1968) (prosecutor's opening statement improper because it referred to other inadmissible charges against defendant); BAILEY V. U.S., 516 U.S. 137 (1995); U.S. V. MERRIAM, 513 F.3d 1293, 1307 (11TH CIR. 2008) (prosecutor's statement that medical examiner had seen track marks on decedent's arms improper because examiner actually testified he saw no injection site)

Prosecutor Scott says on pg 142, line 4 "I BELIEVE MR. FLYER IS GUILTY OF SEVERAL CRIMES." LINE 17. HE throws his own standard on the jury as to what he thinks is morally right on page 143 lines 5-9. On pg 144, line 11 Scott says: "LARRY PROBABLY DON'T HAVE 40 DOLLARS IN HIS POCKET." This is adding prejudice to the jury with no proof of that statement.

LINE 19 he tells the jury that the victims "tells their grandma that there are naked pictures on that phone." When the prosecutor knows by the testimony of the girls that they were not saying the appellant was naked, but the girls considered nakedness as just wearing swim pants.

On page 145, line 5 he says: "I WANT Y'ALL TO FIND HIM GUILTY." Prosecutors are not to express personal opinions. FLOYD V. MEACHUM, 907 F.2d 347, 354-55 (2d CIR. 1990) (prosecutor's request that jury consider prosecutor's own integrity and ethics before deliberating on evidence improper); U.S. V. SOE 1066, 1076 (D.C. CIR. 2007) prosecutor's expression of personal beliefs regarding defendant's guilt improper); U.S. V. DUFFAUT, 314 F.3d 203, 210-11 (5TH CIR. 2002) (prosecutor's remark that having

drugs were not "okay" was improper personal opinion.

Watt is prejudicing the jury to think on the line of his ethical standards every time he says "I THINK" throughout his closing statements. See PG 142, LINE 19, 22, 23, 148, LINE 21, 149 LINE 5, and PG 149 LINES 8, he says: "I don't have to prove to you that the girls got these messages."

This is the whole purpose of the trial. To prove that the girls did read the messages. Testimony from the girls proved they never read them. U.S. v. KINSELLA, 622 F.3d 75, 85-86 (1st Cir. 2010) (prosecutor's reference to drug sale unsupported by evidence improper); U.S. v. FENZI, 670 F.3d 778, 782-83 (7th Cir 2012) (... NOT SUPPORTED BY RECORD).

and PG. 152 LINE 17-19. The jury saw the photos. There were no naked children in any of them, and the prosecutor led the jury to admit they were naked. U.S. v. AYALA-GARCIA, 574 F.3d 5, 18-22 (1st Cir. 2009) (prosecutor's improper remarks during closing argument not harmless because insinuated that defendants were violent and that jurors had responsibility to prevent gun violence); BATES v. BELL, 402 F.3d 635, 649 (6th Cir. 2005) (

prosecutorial misconduct that deliberately inflamed jury's passions not harmless because prejudiced defendant); U.S. v. MILLER, 621 F.3d 723, 732 (8TH CIR. 2010) (prosecutor's improper comments no harmless because comments related to central element of case and prejudiced defendant's right to fair trial.

7. Due Process Violations

The U.S. Const. amends. V, XIV. The Due Process clauses prohibit government from infringing on persons liberty interest without due process of law.

If the prosecution would have disclosed the indictment and warrants with the affidavits of officer Eric Hodges claiming the appellant is nude in the photos seen by the minors, exculpatory evidence would have found the ~~defendant~~ appellant not guilty. County of V. OKLA. ex Rel. Dept of Public Safety, 722 F.3d 1216, 1226-27 (10TH CIR. 2013) (... clearly established the officer lacked probable cause); ORNELAS V. U.S. 517 at 699.

The prosecutor or police officer Eric Hodges

had no legal right to obtain search and seizure warrants for the appellants property. All the alleged evidence, the cell phone given to the police by the alleged victims mother was the only thing needed to charge the appellant with that joint charge of MS2128 WARRANT NO. Dissemination) obscene material to a minor. U.S. V. RAVUKK, 700 F. 3d 691, 660-61 (3d CIR. 2012) (no probable cause existed to search for child porn because affidavit lacked detail about what alleged image of child porn depicted and conclusory description of images is not enough); U.S. V. DAVIS, 650 F. 3d 460, 466-72 (4TH CIR. 2011) no probable cause existed to search home for evidence of child porn because warrant application failed to indicate pictures allegedly possessed by defendant were pornographic or when pictures were allegedly possessed, and victims of alleged abuse did not claim defendant showed them porn); U.S. V. FALSO, 544 F. 3d 110, 120-24 (2d CIR. 2008) (warrant to search for child porn invalid because no allegation defendant subscribed to website that contained downloadable child porn)

all the above conduct describing the appellees, prosecutors and police officers show how they violated the appellants constitutional Due Process Rights. U.S. V. TUNA, 508 F.3d 694, 700-01 (2d cir. 2007) (Due process violated when court considered an indictment without any supporting evidence); WOLFISH, 441 U.S. at 535-39 (1979); SURPRENANT V. RIVAS, 424 F.3d 5, 14-16 (1ST CIR. 2005) (possible violations where officer fabricated charge against pretrial detainee because officer knew charge might lead to placement in segregation, which constituted punishment); CHAVIS V. ROWE, 643 F.2d 1281, 1285-86 (7TH CIR. 1981) (holding report that tended to show the prisoner was not guilty should have been disclosed.

B. PROVING ELEMENTS BEYOND A REASONABLE DOUBT

Under the Due Process Clause of the Fifth Amendment, the prosecution is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. WINSHIP, 397 U.S. 358, 364 (1970)

It was never presented in trial any proof that the appellant was nude in the photos the witness saw or any evidence the minors read any indecent message by the appellant, or proof that the people in the photos were children, or even performing anal sex. The state failed to sustain any burden of proof and that is why the defendant's counsel requested directed verdict. The judge denied it but made it possible to come back to it at any time. LAFAVE, CRIMINAL LAW § 1.8 (5TH ed. 2010); SULLIVAN V. LA., 508 U.S. 275, 278 (1993); MCCORMICK, EVIDENCE §§ 336-337 (6TH ed. 2006).

9. The court must acquit if it defines reasonable doubt in a way that impermissibly eases the prosecution's burden of proof. CAGE V. LA., 498 U.S. 39, 41 (1990)

The prosecutor finally admits the appellant is wearing speedos like the photos and the alleged victims testify to this as well. Never read any indecent messages. So, in the process of the trial, the prosecutor shifts his attack to try and convince the jury the appellant had an intent to have sex with the minors, simply because he had no burden of proof

to the essential elements on the indictments. For 11
these reasons the conviction was not
constitutionally valid and conviction should be
reversed. U.S. V. LESQUIRE, 672 F.3d 724,
728-32 (9TH CIR. 2012)

CONCLUSION

For the foregoing reasons, the court should
dismiss all charges and grant reversal of
convictions.

DATE 8-8-2017
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