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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT S.C. SUPREME COURT

OCT 24 2017

LARRY JAMES TYLER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

APPELLANT CASE NO. 2016-002364

APPROPRIATE SUPPLEMENTAL BRIEF

1. The trial court judge erred by failing to recognize a mistrial.

The prosecution's witness, Davis Brown mentioned the appellant is a registered sex offender in her testimony and the judge never made a ruling on this.

This statement was not recorded in the trial transcript, but if the court hears the recorded audio of the trial it will be revealed.

The appellant was shocked that my attorney did nothing when Mrs. Brown said this, but

el was assuming my attorney knew what he was doing, so el did not say anything to him about the illegal introduction of my past criminal record.

U.S. v. VARDOLAKIS, 233 F.3d 113, 126 (1st Cir. 2000) (improper admission of prior bad act evidence not harmless because could sway jurors' judgment); U.S. v. Miller, 673 F.3d 688, 701-01 (7th Cir. 2012) (improper admission of evidence regarding defendant's prior conviction not harmless because evidence was key to proving essential element of crime.

2. This was an abuse of discretion on the part of the judge.

Also the intentional act of leaving this evidence out the trial transcript is proof of coverup to injustice that prevented the appellants trial.

3. Plain Error Relief Should be granted due to clear and obvious substantial rights violated.

a. "Deviation from a legal rule is 'error' unless the rule has been waived." QUINN, 502 U.S. at 732-33.

The petitioner was convicted of a second underlying crime under indictment 2013-05-16-0603. Under section (10) the statute becomes

a felony because a sexual encounter occurred and it is entitled "CRIMINAL". If no sexual encounter occurred, it is a misdemeanor and should be titled "Obscene Solicitation of a Minor", but the prosecutor deliberately hid this underlying charge and the petitioner's counsel did not tell the court any difference.

Violating the petitioner's substantial rights. *U.S. v. BENJAMIN*, 711 F.3d 371, 379 (3d Cir. 2013) (error affected defendant's substantial rights when defendant was convicted of a second, improper conviction, though the second conviction did not extend defendant's sentence);

This has extended the petitioner's sentence because he is now under S.V.P. civil commitment.

U.S. v. Guzman, 599 F.3d 799, 813 (7th Cir. 2010) (plain error required remand when miscalculation led to incorrect sentencing range under Guidelines, affecting fairness and integrity of proceeding.); *U.S. v. KINSELA*, 622 F.3d 25, 83 (1st Cir. 2010) (plain error review where defendant failed to make timely objection to prosecutorial misconduct); *U.S. v.*

BADER, 678 F.3d 859, 869 (10th Cir. 2012) (PLAIN ERROR because improper jury instructions permitted jury to convict defendant of a charge

he was never indicted.)

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B. NO PROOF OF ESSENTIAL ELEMENT OF THE CHARGE.

Indictment no. 2013-05-16-0606 says in the affidavit that the petitioner was made in photos on a cell phone he gave to a minor of himself. There was no evidence ever submitted in trial to prove this essential element of the charge. So it is evident the petitioner was found guilty by "intent" which is not mentioned in the affidavit.

That word is only in the affidavit of indictment no. 2013-05-16-0603. The petitioner was found guilty by "intent" along with the other three indictments.

U.S. v. Castro, 704 F.3d 125, 137-41 (3d Cir. 2013) (plain error because prosecution failed to prove one essential element of the charged offense); *U.S. v. McKee*, 906 F.3d 229, 231 (3d Cir. 2017) (plain error because jury instruction allowed jury to convict defendant on per charges absent from indictment and government could not show with certainty that jury did not convict defendant on that basis).

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U.S. v. SPINNIER, 152 F.3d 950 (D.C. Cir.
1998) (stain error because government failed
to present any evidence on essential element
of crime).

Misjoinder / Abuse of Discretion

The trial judge's denial of severance of
offenses constituted abuse of discretion and
misjoinder of trials because indictments have
no evidence the crimes are related. The
alleged nude photos of the petitioner is totally
separate to the alleged child pornography the
police claim they seized from the petitioner's
e-mail two months after the alleged initial
offense of disseminating harmful material
to minors. U.S. v. SARKISIAN, 197 F.3d 966,
976 (9th Cir. 1999) (joinder of counts improper
because counts did not naturally flow from
each other, counts did not fall in the same
category of single conspiracy, and no
substantial overlap in evidence); U.S. v.
HAWKINS, 509 F.3d 694, 702-04 (4th Cir.
2009) (joinder of ~~two~~ possessing 2
different types of weapons 3 weeks apart
improper because not logically or temporally

related.

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One important factor in determining whether transactions are connected is whether evidence supporting separate counts sufficiently overlaps so that the same evidence would be admissible at separate trials if the counts were tried separately. See, e.g., *U.S. v. TRAINOR*, 477 F.3d 24, 35 (1st Cir. 2007). The evidence in the petitioners' separate trials could not be interchangeable. *U.S. v. RANWARZO*, 80 F.3d 623, 628 (1st Cir. 1996) (joinder of unrelated transactions and dissimilar crimes improper).

Also, petitioners' counsel did not move for a motion to sever trials due to prejudice because of its substantial and prejudicial effect or influence in determining the jury's verdict, plain error in *Applied*. The petitioner was not aware that his counsel should have moved for a motion to sever trials.

U.S. v. JOYNER, 201 F.3d 61, 74 (2d Cir. 2000) (plain error standard applied because defendant failed to move for severance prior to trial);

U.S. v. BROWN, 560 F.3d 754, 766 (8th Cir. 2009) (plain error standard applied because defendant failed to move for severance under Rule 14 before

trial or during trial.

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5. PETITIONER'S COUNSEL SHOULD HAVE MOVED FOR SUPPRESSION.

1. The ~~app~~ petitioner's counsel was ineffective for failing to make a motion to suppress the Dissemination indictments due to false statement included in the warrant affidavit with reckless disregard for the truth. Officer Eric Hodges said the petitioner was made in the photos. Counsel should have requested an evidentiary hearing to prove by a preponderance of evidence that a false statement was knowingly or recklessly included in the warrant affidavit. The petitioner was not aware that a motion or request for a hearing could be had. 18 U.S.C. § 2518(10)(a). *U.S. v. GONZALEZ*, 1106 F.3d 412, 43d 1107, 1109-11 (9th Cir. 2015) (suppression appropriate when warrant based on affidavit that recklessly misrepresented and omitted information about necessity of wire-tap, ...)

2. After the alleged victims testified that

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the petitioner was not read, or read an indecent message, counsel failed to make a request to suppress any evidence obtained by the police after these ~~two~~³ indictments. 2013-05-10-0606, 2013-05-10-0603, 2013-05-10-0605.

All of these originated from the same incident. The cell phone alleged to have the nude photos and the alleged indecent messages.

The fourth indictment 2013-05-10-0604 came from the illegal seizure of the petitioner's property and computer. This evidence should have been suppressed because the police never had the legal authority to get seizure warrants. *Gentry v. Hevier*, 597 F.3d 838, 851-52 (7th Cir. 2010) (but for counsel's failure to object to unconstitutional search, reasonable probability of different trial result); *Williams*, 529 U.S. at 393 id at 392-93 *U.S. v. Rowland*, 145 F.3d 1194, 1205-06 (10th Cir. 1998) (anticipatory warrant not valid because did not provide nexus between defendant's home and contraband or illegal activity at time of search); *Mink v. Knox*, 613 F.3d 995, 1011 (10th Cir. 2010) (warrant to search

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all computer and noncomputer written materials insufficiently particular because it did not describe criminal warrant did not recite particular crimes to which they related.

The police violated the petitioners 4th Amendment when they searched my computer and e-mail that the alleged victims never are linked to or even examined. U.S. v.

RYAN, 275 F.3d 449, 464 (5th Cir. 2001) (4th Amendment violated when police exceeded scope of private search by examining computer disks that defendant's estranged wife did not previously examine) A search and seizure unsupported by probable cause is generally unlawful.

CARRAN V. U.S., 267 U.S. 132, 155-56 (1925)

CONCLUSION

For the foregoing reasons, the court should grant the dismissal of all charges of the petitioners.

DATE 10-19-2017

LARRY TYLER 2349 ROBERTS RD. DARTMOUTH
S.C. 29532

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

LARRY JAMES TYLER

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2016-002364

PETITIONER'S STATEMENTS OF DISPUTED
FACTUAL ISSUES

PURSUANT TO LOCAL RULES OF THIS COURT,
THE PETITIONER SUBMITS THE FOLLOWING
LIST OF GENUINE ISSUES OF MATERIAL FACTS
THAT REQUIRE THE DENIAL OF RESPONDENTS'
DEFENSES.

1. Whether the respondent knew the petitioner was not nude in the photos in question that was the primary evidence to find him guilty.
2. Whether the Respondent knew the witnesses never told the police they read an indecent message written by the petitioner.

AO 450 (Rev. 01/09) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of South Carolina

Larry James Tyler,
Plaintiff
v.
James Bogle Sr; James K. Falk,
Defendants

Civil Action No. 4:17-CV-01251-MGL

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

[] the plaintiff (name) recover from the defendant (name) the amount of dollars (\$), which includes prejudgment interest at the rate of %, plus postjudgment interest at the rate of %, along with costs.

[] the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) recover costs from the plaintiff (name)

[x] other: The Report and Recommendations of United States Magistrate Judge Bristow Marchant is accepted. This case is dismissed without prejudice and without issuance and service of process. The Plaintiff shall take nothing on his Complaint filed pursuant to Title 42 U.S.C. § 1983.

This action was (check one):

[] tried by a jury with Judge presiding, and the jury has rendered a verdict.

[] tried by Judge without a jury and the above decision was reached.

[x] decided by Judge Honorable Mary Geiger Lewis, United States District Judge

Date: October 05, 2017

Robin L. Blume
CLERK OF COURT

Chondra S. White

Signature of Clerk or Deputy Clerk

3. Whether Eric Hodges lied to the magistrate judge that the Petitioner was nude in photos and videos saw these nude photos of himself, and they read an indecent message written by the Petitioner.

4. Whether Richard Jones knew the victims did not tell the police the Petitioner was nude in photos and read an indecent message.

5. Whether the prosecutors John Holt and Patti McKenzie Parker knew that the Petitioner was not nude in the photos and the victims did not read the alleged indecent message.

6. Whether the Sheriff's office or the Petitioner's counsel ever served him the four indictments before trial.

7. Whether Richard Jones or appellate attorneys submit request to the prosecutor for all exculpatory evidence before trial.

8. Whether Richard Jones obtained the Police Report

9. Whether Richard Jones interviewed the prosecutor's witnesses

10. Whether Richard Jones challenged the veracity of a search warrant application

11. Whether Richard Jones failed to cross-examine state's witnesses on the essential elements of the case.
12. Whether Richard Jones submitted a motion to suppress the illegally obtained seizure evidence.
13. Whether Richard Jones failed to ask questions at trial in proper form.
14. Whether Richard Jones failed to know the law concerning due process.
15. Whether Richard Jones failure to exercise professional judgment on behalf of the Petitioner caused his wrongful convictions.
16. Whether Richard Jones failed to appreciate impact of prejudicial evidence.
17. Whether Richard Jones failed to subject prosecution's case to meaningful adversarial testing.
18. Whether Richard Jones failed to object to the introduction of priors by defense counsel.
19. Whether counsel argued an inappropriate defense.
20. Whether the defense should have been police misconduct due to missing exculpatory evidence.
21. Whether counsel failed to properly preserve errors in the trial.

- 22. Whether counsel had lack of devotion to the interests of the accused
- 23. Whether Government conduct affirmatively misled the defense
- 24. Whether in the Final Argument counsel created incompetent summation
- 25. Whether Richard Jones failed to object to "LITTEST" shifting instruction.
- 26. Whether Richard Jones failed to object to jury instructions adding offense not in indictment.
- 27. Whether Richard Jones failed to object to improper comments by the prosecutor
- 28. Whether Richard Jones failed to address Speedy Trial (I.A.O.)
- 29. Whether Richard Jones failed to defend the petitioner against "intent" accusation.
- 30. At the P.C.R. appeal, counsel Robert M. Paschak wrote a poorly written brief.
- 31. Whether appeal counsel failed to raise issue of ineffective trial counsel on appeal.
- 32. Whether ~~Paschak~~ Paschak failed to raise a state law right on appeal in state court
- 34. Whether trial judge interfered with counsel's strategy.

35. Whether Richard Jones failed to do pre-trial
discovery

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36. Whether Richard Jones failed to prevent
a fundamental miscarriage of justice

37. Whether Richard Jones failed at lack
of instructions as to separate counts

39. Whether Richard Jones failed to prevent
a single substantive error.

DATE 10-19-2017

LARRY TYLER

2349 ROGERS RD,

DARLINGTON, S. C. 29532

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

LARRY JAMES TYLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002364

APPELLANT'S DECLARATION IN SUPPORT
OF MOTION TO SUPPLEMENT BRIEF

LARRY JAMES TYLER STATES:

1. I am the appellant/petitioner in this case. The petitioner alleges that due to police misconduct and prosecutorial misconduct, the petitioner's criminal convictions resulted in a decision that was contrary to an unreasonable application of clearly established Federal law.

The prior convictions were based on an unreasonable determination of the facts in light of the evidence presented in the state court

proceedings? ~~That was~~

2015

2. The ineffectiveness of all the Petitioners appeal attorneys played a large part in the loss of the Petitioners appeal due to not depending the Petitioners on the above grounds.
3. It did not matter how much I pleaded to the counsels in my appeals, they took it upon themselves to choose the issues they were going to depend on or not.
4. Once the evidence did not prove that I was not made in photos that various news, and no indecent message was ^{not} read by the news, the prosecution had to resort to another way to find me guilty by "intent".
5. This was a structural error that allowed a constructive amendment of indictment and the judge or my attorney made no objections.
6. The prosecutor and the police officer Eric Hodges are the ones that deprived me of the clearly established Federal law of procedural Due Process.
7. The prosecutors arbitrary purposeless use of his authority, he interfered with my protected liberty interest.
8. Richard Jones never told me that it was the police officer Eric Hodges that told the grand

Jury that I was nude in the photos and the mirrors read some indecent message I was accused of writing.

9. Richard Jones knew the police officer was lying in his testimony and never confronted him when the officer was on the stand.

10. Rick Jones never made a motion to dismiss the indictment of Disseminating Obscene Material To Mirrors at trial because no evidence was ever submitted to prove the photos were nude or the mirrors read any indecent message.

11. I never saw one of the four indictments before going to trial.

12. I never even saw the photos that I was supposed to be nude in before trial.

13. The investigative video will show me asking Eric Hodges to let me see these nude photos but he refused to let me see them.

14. This was a conspiracy against me with Rick Jones in it with the sheriff and the prosecutor.

15. Rick Jones allowed the jury to convict me on the basis of unreasonable determinations of the facts in light of the evidence presented.

by not making a second request for a directed verdict at the end of the trial, which the judge said Jones would be able to.

16. Looking at the evidence before trial and how it was obtained is proof of premeditated and malice on the part of the government.

17. The police had no evidence what so ever to charge me with that first crime with warrant mess 128 because photos wearing swim trunks is not nudity.

18. The nudity claim by officer Eric Hodges made it a crime, and he said it in order to get me convicted.

19. Plus the Sheriff Wayne Byrd and Eric Hodges intentionally charged me with sex crimes that no evidence was submitted at trial proving I had sex with the minors as the conviction "Criminal solicitation of a minor is defined according to section (10) of the statute, and this is why I am now facing 5.16.P. civil commitment.

20. I never had sex with the minors and that issue was never brought up at trial.

21. Richard Jones knew I was being charged with a crime of sexual contact with a minor and did nothing before, during, or after trial.

22. This wrong charge was never pointed out
by either of the appeals councils so that
I could be eligible for S.V.P. commitment.

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23. All of my attorneys were severely ineffective
for all the errors brought out in my
statement of Disputed Facts.

Pursuant to 28 U.S.C. § 1746, I declare
under penalty of perjury that the
foregoing is true and correct.

DATE: 10-19-2017

WARREN J. TYLER

2349 RIVERS RD.

ORLANDO, FL 32832