

Yes, Michael Lamar Couch #282654 SSN: 251534220
Lindsay B P.O. Box 580, Una SC. 29378

The following document is Pro Se response to petition filed by my counsel. In it I am entering with the Court the issues I think the Court should consider in this appeal. Also arguments for the Court to consider. I am filing this Pro Se response within the (45) day limit.

Thank you sincerely

Michael Couch

RECEIVED

NOV 14 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA **RECEIVED**
IN THE SUPREME COURT

NOV 14 2017

S.C. SUPREME COURT

Certiorari To Oconee County
Honorable Letitia H. Verdin, Circuit Court Judge

Michael Lamar Couch,

Petitioner

V.

State of South Carolina

Respondent

Appellate Case NO 2017-000159

PRO SE RESPONSE

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State v. Govan 320 S.C. 392, 46 S. SE 2d 574 (Ct. App 1995)

STATUTES

S.C. Code Ann. § 19-11-30

RULES

Evid. 901 (a)(b)(5)(6)

Rule 613(b)

ISSUE PRESENTED

Did the PCR Court err in denying relief where trial counsel failed to object to prejudicial 911 recording that was illegally introduced into evidence under Evid. 901(a)(b)(5)(e) and also violated 6th Amendment to the United States Constitution?

STATEMENT

On trial page Tr.p. 69 Solicitor admits to open line, no caller identified. On Tr.p. 78 18-19 He tells the jury that they will be hearing a 911 tape in a minute

On trial page Tr.p 78 20-21 He tells the jury that they will be hearing what was happening that day.

On Tr.p. 82 Lns. 11-12 911 dispatcher Kerr says that he could not get anybody to the phone. Solicitor moves to admit 9-1-1 recording into evidence Tr.p. 85 Lns. 24-25. My counsel makes no objection to 9-1-1 recording being admitted into evidence Tr.p. 86 Ln 2 and does not wish to cross examine 9-1-1 dispatcher Kerr Tr.p. 87 Ln. 3 At no time during trial was either I or the alleged victims ever asked whether that was our voices on this 9-1-1 recording.

ARGUMENT

The PCR Court erred in denying relief where trial counsel failed to object to prejudicial 911 recording that was illegally introduced into evidence under Evid. 901(a)(b)(5)(6) and also violated 6th Amendment to the United States Constitution.

Rule 901 Requirement of Authentication of Identification

(a) the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations: By way of illustration only, and not by way of limitation the following are examples of authentication or identification conforming with the requirements of this rule:

(5) Identification of a voice, whether heard first hand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations: Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if (1) in the case of a person, circumstances, including self-identification, show the person answering to be the one called or (2) in the case of a business and the conversation related to business reasonably transacted over the telephone

While record includes evidence that the 9-1-1 call was properly recorded, evidence is lacking as required under Evid. 901 to identify the voice of the person making the call as that of the alleged victim in this case.

Officer Kerr received a phone call through 911 dispatch and was never able to get anyone to the phone.

Tr. p. 82 Lns. 7-21. Solicitors moves to admit 9-1-1 recording into evidence Tr. p. 85 Ln 24-25 with no objection from my counsel. Tr. p. 86 Ln. 2.

No cell phone was found or collected and put into evidence.

Neither officer Kerr or Sgt. Patterson had any personal knowledge of who made the cell phone call and there was no evidence linking a cell phone that supposedly made the call, therefore the officers lacked any personal knowledge of the origin or the "condition precedent" and the recording should not have been admitted.

While record includes evidence that the 9-1-1 telephone call was properly recorded, evidence is lacking as required under Evid. 901 to identify the voice of the person making the call as that of the alleged victim in this case.

Neither me nor Mrs. Grant was asked if the voices on the 9-1-1 tape were ours.

901 requires identification of the voice in a telephone call before a recording of a telephone call is to be admitted into evidence.

Admission violated my right to confront witnesses against me as guaranteed by the 6th Amendment to the United States Constitution.

State v. Spires 7th Dist. Noble No. 04 No 317

Toledo v. Green 33 N.E. 3d 581

ISSUE PRESENTED

Did PCR Court err in denying relief where trial counsel failed to object to trial court denial of witness Spousal Communications Privilege and for not informing witness that she could exercise her 5th amendment right to remain silent?

STATEMENT

On the first day of trial alleged victim Sommer Grant informs the Court that she's exercising her privilege to not testify against Michael Lemar Couch for the first time on trial Tr. p. 96 Lns 19-20. The Court asks if she was exercising a privilege Tr. p. 96 Ln. 21 and she states yes Tr. p. 96 Ln. 22. The Court goes on to ask her why does she not want to testify and she says that she just would rather not testify Tr. p. 97 Ln. 7-8. Trial Court continues ~~not~~ to ask her why and she states repeatedly that she just wishes not to testify without any interruption from my counsel. Tr. p. 97 Lns 7-20 They continue to try and see what her privilege is while counsel tells court that he wishes to wait until they are done before he talks to witness. They try and give her an opportunity to look at her statement and she instructs them again that she would rather not answer or to testify against me. Tr. p. 100 Ln. 15-17. Judge denies Sommer privilege Section 19-11-30 on Tr. p. 107 Lns. 23-25 without any objection from my counsel therefore not preserving this issue for appellate review. He never instructed her of her 5th amendment right to remain silent as he should have. On Tr. p. 114 After being given the opportunity to explain what was in her statement after being denied her spousal communication privilege continues to not want to testify Tr. p. 114 Lns 15-16.

ARGUMENT

The PCR Court erred in denying Petitioner relief for trial counsel failure to object to trial Court denial of Spousal Communication Privilege Section 19-11-30 S.C. code, failing to preserve issue for appellate review and also for not informing witness that she could use her 5th amendment right to remain silent.

SPOUSAL COMMUNICATION PRIVILEGE

Section 19-11-30 of the South Carolina Code States:
In any trial inquiry in any suit, action, or proceeding in any court or before any person having by law or consent of the parties, authority to examine witnesses to hear evidence, no husband or wife may be required to disclose any confidential or, in a criminal proceeding, any communication made by one to the other during their marriage.

Alleged victim Sommer Grant and I met definition of husband and wife therefore Spousal Communications Privilege applied between her and I. On Tr. p. 96 Lns 19-20 she exercises her privilege to not testify against me. Court asks is she exercising a privilege and she states yes. Tr. p. 96 Ln 22. She continues over and over to not wish to testify even after Solicitor asks if she would read her statement to refresh her memory. On Tr. p. 107 Lns 23-25 The Court denies the Spousal Communications Privilege applying based on State v. Govan saying that actions are not communications, therefore not protected. Counsel made no objection also not preserving this issue for appellate Court. 9-1-1 dispatch received open-line with verbal altercation going on in the back of the home Tr. p 170 Ln 1-3.

As officer patterson of Walhalla police department arrives on scene He states that he did hear a verbal altercation going on at 503 South Laurel St. Tr.p. Ln 17-18. Spousal Communications Priviledge did apply, not only did counsel not object to this denial, he also failed to instruct the witness that she could have exercised her 5th amendment right to remain silent when she plainly stated that she wished not to testify. Counsel also allowed Solicitor to argue against us being household member in the beginning of trial to switching sides in closing argument on Tr. p. 316 Lns 21-22 to stating we did met definition of household member. If Counsel would have objected to the denial of priviledge and at least saved this issue for apellate review and informed witness that she could use her 5th amendment right then the outcome of my trial would have definitely been different. If not for counsel errors the outcome of the trial would have been different.

Glover v. State 816 N.E.2d 1197

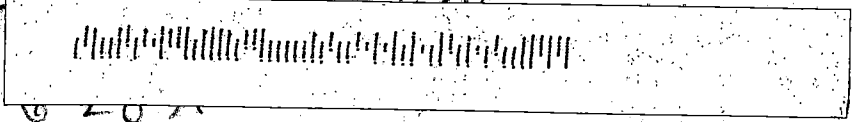
Moseley v. Eakin 15 Rich, 324

Yokie v. State 773 So. 2d 115

CONCLUSION

For the foregoing reasons, Petitioner requests that Court grant the petition for writ of certiorari to allow full briefing on these issues, reverse the charges against me, and remand the case for a new trial.

Michael Low

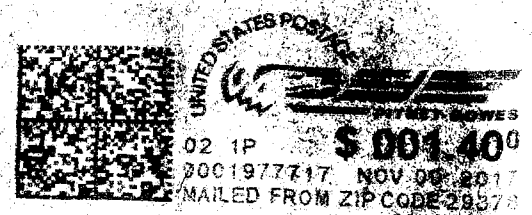


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