

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

RECEIVED  
NOV 17 2017  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEASTON DAHJA KINARD,

APPELLANT

APPELLATE CASE NO. 2017-000215

\_\_\_\_\_  
ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

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ATTORNEY FOR APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to dismiss the case against appellant because the State withheld information regarding the first statement from a co-defendant implicating appellant in the crime, in violation of appellant's federal constitutional rights pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 514 U.S. 419 (1995)?

## STATEMENT OF THE CASE

On November 2, 2012, a Laurens County grand jury indicted appellant for first-degree burglary, grand larceny, and safecracking. R. 372 – 376. On January 30, 2017, appellant was tried before the Honorable Frank R. Addy, Jr. and a jury. R. 1. C. Dale Scott and James C. Todd, IV, represented the State. R. 1. Joel T. Broome and Claude H. Howe, III, represented appellant. R. 1. The jury convicted appellant. R. 349, l. 17 – 350, l. 11. Judge Addy sentenced appellant to a total of twenty years' imprisonment, consisting of fifteen years for burglary and safecracking and a consecutive five years for grand larceny. R. 360, ll. 6 – 19. This appeal follows.

## ARGUMENT

The trial court erred in refusing to dismiss the case against appellant because the State withheld information regarding the first statement from a co-defendant implicating appellant in the crime, in violation of appellant's federal constitutional rights pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 U.S. 419 (1995).

The State's case against appellant Keaston Kinard ("Kinard") rested on the testimony of his two co-defendants, Corey Willis ("Willis") and Gary Jacks ("Jacks"), and a fingerprint found at the scene of the burglary. Defense counsel thoroughly discredited the State's fingerprint examiner on cross-examination. R. 165, l. 18 – 184, l. 8. Therefore, the testimony of Willis and Jacks was central to the prosecution of Kinard.

Someone stole a safe from the house of Bennie Poole ("Poole"). R. 84, l. 16 – 88, l. 21. The safe contained multiple firearms, a coin collection, and a stamp collection, among other items. R. 84, l. 16 – 88, l. 21. The thief also stole Mr. Poole's Ford Ranger pickup truck and used it to carry away the safe. R. 84, l. 16 – 88, l. 21. The police later found the truck and the safe, but it was broken open and they were unable to recover any evidence from either. R. 125, l. 7 – 126, l. 13. The police did obtain a latent print from broken glass at the point of entry into Mr. Poole's house. R. 70, l. 19 – 74, l. 21.

The State's fingerprint examiner, Kimberly Mears ("Mears"), testified she matched the latent print to Kinard. R. 164, l. 19 – 165, l. 4. On cross-examination, Mears admitted there was no calculated error rate for fingerprint analysis. R. 166, ll. 12 – 21. She did not have a set threshold for the number of corresponding points she must find to conclude two prints "matched." R. 181, ll. 3 – 21. She agreed recent studies rebuked prior law enforcement claims of a zero error rate in fingerprint analysis. R. 167, ll. 11 – 25. She agreed that recent studies raised

serious concerns about the ACE-V methodology she used. R. 168, ll. 7 – 19. Among the concerns was the complete inability to protect against verification bias. R. 169, ll. 3 – 10.

After Mears admitted her methodology did not correct for verification bias, she was forced to also admit that the only known print she compared the latent print from the Poole house to was Kinard's. R. 183, l. 19 – 184, l. 8. She did not compare the latent print to anyone from the Poole family. R. 183, l. 19 – 184, l. 8. She did not compare the latent print to Gary Jacks. R. 183, l. 19 – 184, l. 8. She did not compare the latent print to Corey Willis. R. 183, l. 19 – 184, l. 8. Her supervisor knew her conclusion when she "verified" her conclusion. R. 173, ll. 9 – 20.

Lieutenant Tyrone Goggins ("Goggins") of the Clinton Department of Public Safety was the investigator assigned to the burglary. R. 105, ll. 2 – 19. Acting on a tip, on July 19, 2012, Goggins found Jacks at the Clinton Manor Apartments and spoke to him. R. 106, l. 3 – 107, l. 7. On direct-examination, Goggins testified that as a result of speaking with Jacks, he obtained an arrest warrant for Jacks and Kinard. R. 107, ll. 1 – 7.

On cross-examination, Goggins claimed the first time Kinard's name was brought up in connection with the burglary was by Jacks during his conversation with him on July 19. R. 112, ll. 2 – 10. Goggins admitted he made no written report or incident report regarding this July 19, conversation with Jacks. R. 112, ll. 8 – 24. Goggins also admitted no documentation existed in his file regarding any statements taken from Jacks prior to August 8, 2012. R. 112, ll. 19 – 24.

After Goggins finished testifying, the trial judge excused the jury and appellant moved to dismiss "this case for a Brady violation, Kyles v. Whitley violation." R. 150, l. 10 – 151, l. 20. Defense counsel explained that the State never disclosed that Jacks made a statement on July 19. R. 150, l. 11 – 151, l. 20. Defense counsel was only given a synopsis of Goggins' conversation

with Jacks on August 8 and a statement written on August 10, but did not find out until the trial that Goggins interviewed Jacks on July 19. R. 150, l. 11 – 151, l. 20.

In response, the State said there was “no written account of the initial July statement.” R. 152, ll. 17 – 20. The solicitor claimed the defense had notice of “multiple statements” and was able to extensively cross-examine Goggins regarding the statements. R. 152, l. 21 – 153, l. 9.

The trial judge denied appellant’s motion. R. 153, l. 10 – 154, l. 9. The court found the July 19 statement from Jacks was not covered under Rule 5 of the South Carolina Rules of Criminal Procedure. R. 153, ll. 10 – 13. The judge additionally ruled that the statement was not reduced to writing and was just “preliminary discussion” and therefore was not “necessarily covered under any of the authority which you cite, but your objection is noted and motion is noted.” R. 153, l. 25 – 154, l. 9.

The trial judge erred in denying appellant’s motion to dismiss. The State's duty to disclose evidence material to guilt is addressed by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) “The suppression by the [State] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” Brady, 373 U.S. at 87. Consequently, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 432-42 (1995); State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010); Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006).

Brady evidence includes both exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 (1985); Kyles, 514 U.S. at 436-40. When assessing whether to

overturn a case because of the State's failure to disclose evidence, "[t]he question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.'" Riddle, 369 S.C. at 45, 631 S.E.2d at 73 (quoting Kyles, 514 U.S. at 434)).

The July 19 conversation with Jacks satisfies the Brady and Kyles tests. The evidence was only in the possession of the State and was not given to the defense. Jacks' conversation was material and favorable to Kinard because of its impeachment value. Kinard could have used the July 19 conversation to impeach Jacks with inconsistencies between his first conversation with Goggins and his later written statement.

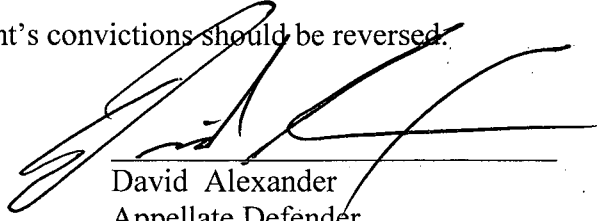
The State's argument that Goggins did not memorialize his conversation with Jacks on July 19 and therefore the prosecution could not prove it was provided to the defense is meritless. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation . . . the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." Kyles, 514 U.S. at 437-38. The State failed in its responsibility under Kyles to discover and disclose to the defense the substance of the July 19 statement by Jacks.

Because the fingerprint evidence was thoroughly discredited, the result of the case would have been different had appellant been better able to impeach Jacks. Both Willis and Jacks were co-defendants facing potential life sentences for first-degree burglary. Their bias was evident to the jury. Willis and Jacks both knew Michael Lemon, who was the father of Mr. Poole's grandson. R. 223, ll. 12 – 24. Jacks admitted knowing the Pooles through Michael Lemon and that he knew guns were in the safe. R. 232, l. 13 – 234, l. 20. In this close case with evidence of

another person's involvement who had inside information about the Poole's safe, the impeachment evidence that should have been provided is enough to undermine confidence in this verdict. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, appellant's convictions should be reversed.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and cursive.

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of November, 2017.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keaston Dahja Kinard states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on January 30 - February 1, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Keaston Dahja Kinard.

Respectfully Submitted,

  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 17th day of November, 2017.

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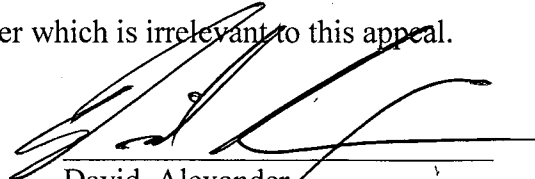
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript Dated January 30 – February 1, 2017
- (2) State's Exhibit 18 (Statement of Gary Jacks)
- (3) State's Exhibit 20 (Redacted Statement of Gary Jacks)
- (4) True-billed indictments

I certify that this designation contains no matter which is irrelevant to this appeal.

November 17, 2017



David Alexander  
Appellate Defender

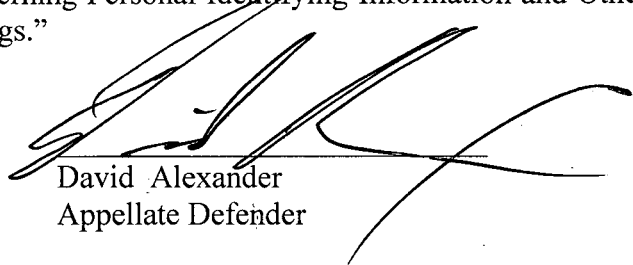
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ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 17, 2017.



David Alexander  
Appellate Defender

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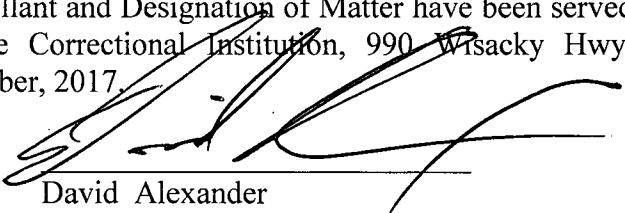
V.

KEASTON DAHJA KINARD,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Keaston Dahja Kinard, #363231, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 17th day of November, 2017.

  
David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 17th day of November, 2017.

Maia J. J. J. (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023