

In The
STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Decided December 13, 2017

THE STATE,

Appellant-Respondent

v.

JESUS V. MARTINEZ

Appellant-Petitioner

Case No. 2016-000527

Opinion No. 2017-UP-462

RECEIVED

DEC 28 2017

SC Court of Appeals

Appeal from Anderson County
R. Scott Sprouse, Circuit Court Judge

PETITION FOR REHEARING

Appellant respectfully petitions the Court for rehearing of the panel decision of December 13, 2017, in this case. The Court’s opinion overlooks and does not address crucial portions of appellant’s arguments. Appellant asks for rehearing on both issues on appeal.

Concise Statement of The Issues and Their Importance

The Proceeding involves one or more questions of exceptional importance, impeaching a witness through prior inconsistent statements, impeaching a witness by showing bias and personal interest, malicious prosecution, PCR, South Carolina Civil Rule 60(b)(2)(3)(6) Relief from a Judgement or Order, Rule 40(A)(3) Petition for Panel Rehearing and Rule 35(a)(b)(c) En Banc Determination.

First and foremost, malicious prosecution from the opposing party with grounds for relief from a final judgement, order and proceeding, Rule 60(b)(2)(3)(6); newly discovered evidence that, with reasonable diligence, could have been discovered in time to move for a new trial under Rule 59(b); fraud, misrepresentation and misconduct by an opposing party; any other reason that justifies relief. The respondent, Mr. Floyd Mills was dishonest and had a clear motive to get rid of or otherwise set up PET. Jesus Martinez. Petitioner, told Mr. Floyd Mills, he was going to sue his company for legal malpractice and negligence on 1-26-2015. Mr. Mills was biased and had a personal interest in the matter because he would

be in danger of losing his firm and license. Mr. Floyd Mills did not fulfill his legal duties, he did not pay all the medicals bills totaling \$1,144.00 from the Village Hospital from a prior case of my son Jesse Martinez VS. Sain Heavner Trucking Co. I talked to Mr. Floyd Mills and his legal response, "Don't pay," a very unethical legal advice (page 16, # 81 & 85). His next response was to commit Medicaid fraud. PET. Jesus tried to reason and remind his lawyer, Mr. Floyd Mills that the distribution of medical bills was his legal duty, "but yall supposed to cover and especially that one, the first invoices where that happen the accident we bring the papers to yall." To which Mr. Mills got furious at PET. and denied the responsibility. PET. at that point told him, "I think I don't need you no more" and released him as legal counsel for that particular case. Date, July 2014 - PET. has evidence in the recordings/transcripts. PET. has evidence proving Mr. Floyd Mills violated the terms of the contract, overcharging the written amount and giving illegal instructions to commit Medicaid fraud. Petitioner, told Mr. Floyd Mills, he was going to sue his company for legal malpractice and negligence on 1-26-2015. Mr. Mills would be in danger of losing his firm, license and livelihood. Mr. Mills had no choice but to set-up PET. and get rid of him before he could file a lawsuit.

The intentional "dignitary" tort of malicious prosecution may be brought by someone against whom a criminal or civil action has proceeded without probable cause and with malicious intent. PET. Mr. Martinez had no probable cause and no malicious intent, he was falsely prosecuted by fear of suing Mr. Mills and reporting his illegal services to the Bar Association and having his practice license revoked. Mr. Mills and Mr. Martinez had worked it all out with a reduced fee and a new contract just 2 days prior to his arrest their was no motive for malicious intent, "we had met previously before this day and had agreed to work everything out. I agreed to reduce my fee. So everything could move forward" (Transcript Page 32). It was Mr. Mills who falsely testified and lied under oath, he made Mr. Martinez appear like a guilty criminal to the court, "Mr. Martinez came into the office and wanted to fire me - He wanted his money - he wanted his money now. He didn't want to wait for the litigation to be over. He wanted - he was in need of the money then and now - I told him that's not how it works. We've lost leverage if I do that" (Transcript page 29). Mr. Mills is Libel / Slander and a Fraud and Lying under oath. Pet. Mr. Martinez recorded many of his meetings with Attorney Mr. Mills including this particular one, Mr. Martinez never brought up any subject of his settlement money nor did he ever tell Mr. Mills that

“he wanted his money.” Mr. Martinez was solely there to clear up the due medical bill that the attorney failed to pay, which was his duty as per the legal binding contract.

Luckily Mr. Martinez recorded nearly all visits with Mr. Mills, everything Mr. Mills has said and testified to has been a lie and we have the tape recordings to prove it. Now we respectfully petition for Rule 60(b)(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) and Rule 60(b)(3) fraud, misrepresentation, or misconduct by an opposing party and also Rule 60(b)(6) any other reason that justifies relief. In addition we would like to petition for Post-Conviction Relief also known as PCR, we more than qualify for this opportunity, our direct appeals have just recently been concluded and PET. Jesus Martinez rights were violated in both the original trial and the appeal. Mr. Martinez received incompetence of the original defense attorney resulting in a prejudice against the defendant, and prosecutorial misconduct, withholding evidence that would have surely proven the defendant’s innocence. Mr. Fletcher Smith the original attorney had possession of the tape recorders that would have proven Mr. Mills testimony’s to be false and fraudulent, and openly admitted during trial to never once hearing them (tape recorder), he also had possession of vital documents both emails and insurance documentation that would have proved for a successful trial. Further incompetence being that the attorney Fletcher Smith could not even remember the clients name during trial, repeatedly calling him “Jose” (Transcript page 22). These tape recordings prove that Mr. Mills testimony’s have been lies and should be impeached and he sentenced to prison.

Alongside Mr. Mills false testimony’s were also very inconsistent statements about the alleged altercation, none of it makes sense, he often forgets his own story and shuffles the scene with different hand choices or different body locations at a table and its consistently a different order of events which take place first, I petition for an Impeachment of a Witness Through Prior Inconsistent Statements. Mr. Mills testimony is completely fictional, inconsistent and physically impossible, Mr. Mills stated that both himself and Mr. Martinez had already taken a seat, “we sat down at the head of the table, him to my right” (transcripts page 33) But later claims Mr. Martinez “hit him as he was sitting down at the conference table” (Transcript Page 34). Later Mr. Mills stated he “was still seated” when Mr. Martinez

“eventually took his left hand and just punched me in the back of the head” (Transcript Page 35). Let alone the two inconsistent scenarios, the laws of physics would still prohibit such actions. In one scenario Mr. Mills stated they had “sat down at the head of the table, him to my right” (Transcript page 33) when Mr. Martinez “took his left hand and just punched me in the back of the head.” Now if Mr. Mills was at the head of the table and Mr. Martinez was sitting at his right how could Mr. Martinez take his left hand and punch the back of Mr. Mills head? Sitting on his right side, it would be physically impossible for Mr. Martinez to take his left fist and strike the back of Mr. Mills head. Mr. Mills can’t keep his story straight, with multiple scenarios none of them are consistent, claiming he was struck while being seated upon entering and then changing his story that they had both already sat down and discussed the paperwork when then being struck. On page 35 Mr. Mills also claims to have “just got punched in the back of the head with a gun” and then he “stood up” where he received 2 more blows “with the butt of the gun” one to the “back of the head and the back of my right shoulder.” Miraculously that would make 3 very lethal blows to the back of Mr. Mills head, 1 strike with a fist and 2 strikes with the butt of a gun, plus the forth blow to Mr. Mills right shoulder. Being pistol whipped not once but twice and struck with a fist to the back of the head and yet miraculously Mr. Mills suffered no injuries or trauma, he didn’t require a doctor or physician or any treatment at all, in fact even the on scene police officers noted no physical damage or bruising. While on page 34 Mr. Mills portrays a completely different scenario, claiming he was struck and stood up “right to right” shoulder and “pushed” Mr. Martinez “that way and stood up” not only is this inconsistent to the testimony he gave on page 35 but Mr. Mills standing at a whopping 6’-2” healthy and weighing over 200lbs allegedly “pushed” Mr. Martinez a 5’-4” disabled diabetic 51 year old man suffering from peripheral vascular disease, bilateral hip degenerative joint disease, neuropathy, and lumbar spine disorders (20 CFR 404.1520(c)) and yet somehow this small man still managed to reach the top of his head, false. (Jesus Martinez 250-73-5743 based on the application for a period of disability and disability insurance benefits protectively filed on September 25, 2014, claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on April 1, 2013.) This is impossible, Mr. Martinez could never reach such an altitude, not to mention his medical conditions and body movement in-capabilities and even more so while being

pushed away from a man nearly two times his body weight. This evidence further proves Mr. Floyd Mills is lying under oath and testifying fraudulent evidence, leaving an innocent man behind bars for a crime not possible. Mr. Floyd Mills has committed many offenses both criminal, state and federal. Mr. Mills should be prosecuted to the fullest extent of the law.

Lastly the two so claimed "witnesses" Lisa Hunt and Ashley Reese's testimony's cannot morally or ethically be allowed as evidence in the court of law due to their severe bias and personal interest. Ms. Ashley has worked fourteen years for Trammel and Mills Law Firm, She's worked for Trey Mills over ten years, and this so called "witness" was in her office throughout the entire visit of PET. Mr. Martinez. In Fact BOTH witnesses Ashley Reese and Lisa were in their private offices throughout Mr. Martinez visit. Ms. Ashley Reese's testimony is not only extremely biased and of personal interest but it also has inconsistent statements that are very contrary to Mr. Mills statement. Ms. Reese claims to have seen "the tables pushed – a paper and pen on the conference room table. It just – it looked scattered" (Transcript page 70). This is very odd because there is only one table and nowhere in Mr. Mills statement does he state any movement of the table. Furthermore Mr. Mills vividly recalls "he grabbed everything off the table, all the paperwork – yes including the checks, including the index card grabbed everything" (Transcript page 36). Ms. Reese's testimony is inconsistent and should be impeached. Both "witnesses" are extremely biased and will say or believe anything they're over decade old employer tells them. These employees have bills, debt, a mortgage, a livelihood and children to support of course they're going to believe their employer and of course they will testify in court because doing so otherwise would put their careers in jeopardy.

Conclusion

For the reasons stated above, Plaintiffs-Appellees respectfully requests that this Court grant an petition for rehearing.

Respectfully submitted,

Certificate of Service

I Jesse Bryan Martinez, hereby certify that I have this 27, day of December, 2017 served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

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Dated this 27 of December, 2017.

Jesus Martinez

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