

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

The State,

Respondent,

V.

Chavis Jamal Jenkins,

Appellant

Appellate Case No.: 2016-002191

Pro-Se Appellant Brief

By: Chavis Jamal Jenkins
BRCI-Murray Unit
4460 Broad River Road
Cola., S.C. 29210

STATEMENT OF THE CASE

Based on the circumstances involved with the case. Appellant carefully 'restates' the issues as they are omitted by counsel of record for this appeal. Which are necessary for a complete determination on the merits. Especially as they relate to "(1) the proper procedure for implementing a photo-line up in the State of South Carolina and; (2) Appellant's entitlement under the Confrontation Clause, to face his accuser as well as cross-examine the alleged testimony given to police.

Accordingly, the Grand Jury for Charleston County, South Carolina, indicted Appellant for a September 13, 2013 incident, charging him with (a) carjacking, (b) armed robbery, (c) kidnapping, and (d) possession of a weapon during the commission of a violent crime, on December 9th, 2013.

The concerns within this pro-se brief stems from the initial information (allegedly) given to police, by a witness named "**Kleta Garrett**". Which "led to Appellant's photo being included in a suggestive photo array". For which the victim equivocally selected him as the suspect".

The contents of Garrest's statement (or alleged statement), wasd that; "she had a conversation with Candice Singleton, and Candice Singleton had told her about a car jacking she did with her boyfriend". That once this information was conveyed to Kleta Garrett, "she needed to tell somebody and contacted the police".

In so doing, Ms. Garrett, allegedly flagged down Officer Thomas Wallace, of the Charleston Police Department.

Privy to this initial investigation, as well as the subsequent photo line-up were; "PFC C. Terry (162), Sgt. Huges, Det. Thomas Wallace, Officer Niemiec, and Officer Travis Eugene Repman, of the Charleston County Police Department.

According to Officer Repman's initial investigation report. He responded to the scene of the robbery on the date of such. And conducted his investigation. Which included obtaining video surveillance from the surrounding businesses. That failed to produce any evidence of the crime.

At page (012) of the Rule 5 material. Officer Repman's statement (in relevant part reads as follows):

1900 hrs, I was contacted by Sgt. Huges, who advised that property detectives were contacted by a concerned citizen, who advised that they overheard a female at a bar talking about her and her boyfriend who robbed a Hispanic female at the Huddle House on today's date and that they made mention to setting the robbery up over craigslist.org. I was advised that the citizen was able to provide enough information to cooperate what the victim had reported earlier in the day. The female was identified as Candice Singleton and her boyfriend was determined to be Chavis Jenkins. They were reported to be staying in room #242 in the Budget Inn near the incident location. Property located Singleton and questioned her. SEE DET. NIEMIEC'S NOTES FOR FURTHER DETAIL. Singleton does identify Jenkins as her boyfriend and that they are staying at the Budget Inn. A photographic array was obtained via ACDC.

9/15/2013 @ 2200

Det. Neimiec provided a copy of the lin-up that he had received. I contacted the victim who advised that she would come in to view it.

2230 hrs.

the victim arrived and was placed into the interview #3, with audio video to have the line-up shown to her by Det. Repman, who had no knowledge of the suspect.

Here, the facts as recorded by Officer Repman's initial report clearly demonstrates "he was actively involved with the identification of Appellant, through the 'concerned citizen', of which, was none other than Ms. Kleta Garrett". To which his [Officer Repman] trial testimony (that he did not know who the suspect was when conducting the photo line-up, clearly refutes), was totally false. And such violates the dangers of police interference, and is a product of 'suggestiveness'.

Moreover, with Appellant's defense being 'misidentification', with no physical evidence Appellant participated in this crime. Except for the 'concerned citizen's alleged tip. Which was withheld from the defense until 'after trial'. Renders the initiation of the case and Appellant's photograph being included, "a violation of the Confrontation Clause, and Appellant's right to cross-examination of the information given by Kleta Garrett". Had not the alleged tip being used; "Appellant's photograph could not have been entered in the photo-array". Which brings about Appellant's grounds for this appeal.

APPELLANT'S GROUNDS FOR HIS APPEAL

1. Whether Appellant's right to cross-examination of Kleta Garrett, was violated by the State's failure to call her as a witness, seeing that she provided the basis for suspecting Appellant as hav-

ing committed this crime?

2. Whether Officer Repman's false testimony to the jury, bolstering the 'double-blinded' photo line-up procedure was violated, when the procedure requires "an independent officer to conduct the line-up, that is unaware of the suspects identity?

3. Whether the cumulative errors above, and the Brady violation by withholding Kleeta Garrett's alleged statement to police, rendered the trial in this case fundamentally unfair, in violation of Appellant's rights to Due Process and a Fair trial?

Argument (1).

Here, the Sixth Amendment's Confrontation Clause provides a criminal defendant the right to 'directly confront' adverse witnesses, Md. v. Craig, 497 U.S. 836, 846 (1990)("Face-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person."); see also Bullcoming v. N.W., 131 S. Ct. 2705, 2716 (2011)("The Cl. does not tolerate dispensing with confrontation simply because the court believes that questioning one witness about another's testimonial statements provides a fair enough opportunity to cross-examine."); see Coy v. Iowa, 487 U.S. 1012, 1019 (1988)("It is always more difficult to tell a lie about a person 'to his face' than 'behind his back'").

Thus, the right to cross-examine adverse witnesses, and the right to be present at any stage of the trial enable the defendant to effectively cross-examine adverse witnesses. See U.S. v. Walker, 673 F.3d 649 (7th Cir. 2012)(Confrontation Clause violated when court admitted testimonial statements of witness available but not called to testify.)

Although Appellant brought this concern to the counsel representing this appeal. Such issue was not included for appellate review. When the authority concerned as cited, "could have potentially eliminated the entire photo array". Seeing Appellant's photograph came through the guise of "Kleta Garrett's alleged identification (which was a product of impermissible hearsay". If not totally constructed by police.

However, by guaranteeing these rights, the Confrontation Clause serves to "ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing" in an adversarial proceeding. See Md. v. Craig, Id; and Kentucky v. Stincer, 482 U.S. 730, 737 (1987)(confrontation right designed to promote truth-factfinding function of trial).

Although Appellant's photograph was placed in evidence by word of mouth (according to police officer Thomas Wallace), identifying Appellant as the suspect of the crimes. And such information shared with Officer Repman and others. The State made certain rather than make available, "Kleta Garrett", for confrontation purposes. In other-words; "during the Niel v. Biggers hearing", Appellant and his attorney was unaware of the contents of "all of Kleta Garrett's statements". See Appellant's Motion for a New Trial. And had such been provided, "it (the statements) could have very well rendered the photo line-up unreliable". For that reason, Appellant was deprived of his right to cross-examine and confront his accuser. Which coincides with Appellant's next argument. And adequately supports sufficient grounds for a new trial.

Argument (2).

Here, Officer Repman without provocation, testified falsely; "concerning the procedures to be employed when conducting the line-up". Stating that a "sequential double-blinded line-up". Essentially required the officer conducting such would not know which suspect's identity. For which was not the case in this instance. See Tr. R. p. 218 and 219.

However, Officer Repman was privy to Kleta Garrets statements, coupled with the initial investigative reports suggesting Repman was informed about Appellant and received information from other officers involved based on Garrett's statement, "of who the suspect was". Yet, on Tr. tr. p. 18, lines 18-25. Repman, while under oath, denied he knew who Appellant was.

For argument sake, the "Double-Blind" Procedure was set in place to improve accuracy of a person identifying a suspect. A double-blind line-up is "one which neither the administrator nor the eyewitness knows who the suspect is". This prevents the administrator of the line-up from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick a suspect. Which is apparently what actually occurred in this case.

Officer Repman on Tr. tr. p. 218, II. 4-6, stated the following:

Repman stated: He showed Davila a photographic line-up. Repman said he used "a sequential double blind line-up". R. 218, II. 4-6.

Here, although Officer Repman did not have to testify falsely, he did just that. And the only foreseeable bases to do such unprovoked. Was to place more confidence in their (police) tactics relating to the victim's identification of Appellant. Which was equivocal and uncertain from the start.

Normally, once a court finds and determines a officer made false and misleading statements under oath, that he had a duty to tell the truth. The evidence uncovered may be suppressed, as the fruits of a poisonous tree. See U.S.C.A. Fourth Amendment.

Here, the submission of Appellant's 'person' on photographic paper for purpose of conducting a 'search' (who the suspect was) constitutes search and seizure under the United States Constitution. See Oliver v. U.S., 466 U.S. 170, 180 (1984)(To constitute a search, the governmental intrusion must be on one of the protected areas enumerated in the Fourth Amendment, namely "persons, houses, papers, or effects".)

Yet here, 'the tip' which caused Appellant's photograph to be distributed was not only unreliable. Police sought to withhold the information to eliminate any effective confrontation or cross-examination of the "probable cause tip". Which in and of itself, is grounds for a new trial, which brings about the final issue on this pro-se appeal brief.

Argument (3).

Here, Appellant argues his rights to Due Process and a fair trial was violated by the State's failure to disclose Kleta Garret's statements, in their entirety. In violation of Brady v. Maryland, 373 U.S. 83 (1993). In that; Ms. Garretts statements were the pivotal instrument which got the prosecutions ball rolling. Coupled with the deprivation of Appellant's rights to confrontation and cross-examine, "once the State failed to call her as a witness to the statements allegedly made".

To demonstrate a violation of Brady, the Appellant must show the evidence was (1) favorable to the accused (after discovered evidence shows Ms. Garrett stated 'she never gave police the statement alleged concerning a conversation between her and Candice), (2) such evidence was in possession or known by the prosecution (as it was apparently known and a reason why the State didn't call Garrett as a witness), (3) such was suppressed by the State, and (4) such was material to the accused guilt or innocence, or was impeaching see State v. McCray, 413 S.C. 76 (2015).

The State suggested in the Post Trial Motion, such Brady violation did not affect the outcome of the trial. However, trial counsel failed to bring the above grounds to the attention of the court. As it pertains to cumulative errors above.

Here the above errors at trial cannot be harmless, as there was "no forensic evidence, no fingerprints, DNA, or other evidence linking Appellant to this crime. For that reason, Appellant main-

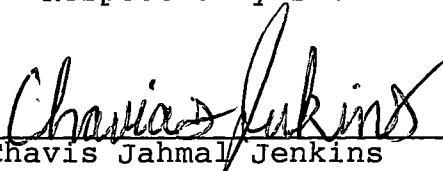
tains his actual, factual innocence. Which brings about the conclusion while referencing Anders v. California.

For decades or more, a continuing line of cases has reached the United States Supreme Court, concerning discrimination against the indigent on his first appeal. Beginning with Griffin v. Illinois, 351 U.S. 12 (1956) where it was held that equal protection was not afforded an indigent appellant where the nature of the review 'depends on the amount of money he has', at 19, 76 U.S. at 591, and continuing through Douglas v. California, 372 U.S. 353 (1963). The Supreme Court has consistently held invalid those procedures 'where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself'. 83 S. Ct. at 817.

In conclusion, Appellant reminds this court of appeals of the importance of the above consideration. Whenever a Anders brief is filed. Where especially as here, "there seemed to be more pertinent grounds for relief which should not have been overlooked, "or filed under an Anders review. For these reasons and grounds contained herein, Appellant moves not only for a new trial; "but moreover, for effective appellate representation". In that, "even the issue raised by appellate counsel was more suitable for a merits brief as opposed to a review under Anders.

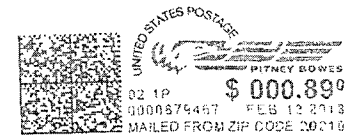
Wherefore, based on the grounds contained herein, Appellant respectfully moves this Honorable Court of Appeals to reverse the conviction and sentences for a New Trial. And any further relief this Court deems just and proper.

Respectfully Submitted,

/s/ 
Chavis Jahmal Jenkins
BRCI-Murray Unit
4460 Broad River Road
Columbia, S.C. 29210

cc: filed
2/12/2018

Chavis Jamal Jenkins
Broad River Corr. Institution, Murray Unit
4460 Broad River Rd.
Columbia, S.C. 29210



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South Carolina Court of Appeals
1220 Senate St
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