

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2017-001046

Brian MacDermant, Petitioner,

v.

State of South Carolina, Respondent.


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SC Court of Appeals

FINAL REPLY BRIEF

July 21, 2018

Signed/ 
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TABLE OF CONTENTS

Facts1

Argument

I. IF THE APPEALS JUDGE FAILED TO RULE ON ANYTHING, THIS IS AN ERROR, THE APPEALS JUDGE SHOULD HAVE RULED ON WHETHER I GOT A FAIR TRIAL2

II. BECAUSE A MEMBER OF THE COURTROOM AUDIENCE (THE ALLEGED VICTIM'S WIFE) COULDN'T CONTROL HERSELF, AND INTERJECTED TESTIMONY INTO THE JURY TRIAL FROM WHERE SHE WAS SITTING IN THE COURTROOM, THIS CLEARLY AND BLATANTLY VIOLATED THAT A FAIR TRIAL BE CONDUCTED AND VIOLATED THE 5th and 14th OF THE U.S. CONSTITUTION3

III. I NEVER WAIVED MY RIGHT TO CLAIM PERJURY IN FRONT OF THE APPEALS JUDGE3

IV. BECAUSE JUDGE MULLEN ASKED INAPPROPRIATE AND IRRELEVANT QUESTIONS DURING THE APPEALS HEARING, AND GLEANED THE ANSWERS FROM ME, SHE BIASED HERSELF IN FAVOR OF THE ALLEGED VICTIM, CLEARLY AND BLATANTLY BECAME PREJUDICED, AND NO LONGER IMPARTIAL4

V. BECAUSE THE MAGISTRATE JUDGE DENIED MY RIGHT TO SHOW PERJURY IN NOT ALLOWING ME TO INTRODUCE INTO EVIDENCE DURING MY DEFENSE PORTION OF THE JURY TRIAL, THE WITNESS STATEMENT HANDWRITTEN BY THE VICTIM WRITTEN MINUTES AFTER THE ALLEGED CRIME*4

***THE MAGISTRATE JUDGE EITHER COMMITTED FRAUD OR IS IN SERIOUS ERROR, AS THE JUDGE NEVER SAID, "affidavits in lieu of personal appearance by witnesses who live in the area and could have been summoned are hearsay and not admissible as evidence" (Return of Appeal, p.2) This quote appears on p. 17 in INITIAL BRIEF OF RESPONDENT**

Conclusion5

FACTS

I told the judge at the appeals hearing in Beaufort County that I did not get a fair trial, referring to my wrongful conviction in Magistrate Court in Beaufort County. It is proven 100% there is a verbal recording of the jury trial (R. p. 29), that the magistrate judge said nothing in reaction from the alleged victim's wife testifying from the audience. I witnessed the judge show no physical reaction to the audience interjection. The verbal recording of the jury trial is saved onto a CD which I have and I meticulously transcribed (some time before April 11, 2017) the entire jury trial in order to make sure it is accurate. It is available to anyone who requests a copy from me because the state has typed that they could not obtain an audio copy despite their attempts (Initial Brief of Respondent, p.2). The magistrate court trial was not a fair trial.

THAT IS A FACT.

I never said or wrote that the pre-trial motion for continuance (on the day of the jury trial) took place between voir dire and jury trial. The state is inaccurate when they typed, "...the parties participated in a pretrial conference after jury selection on August 16, 2017." (Initial Brief of Respondent, p.8). The judge said we're on the record at the start of the pre-trial motion. This is the same room where we later went back to in the middle of the jury trial, because I forgot (at the time I made motion for continuance) to make a motion for witnesses be sequestered. Joni Fields, Magistrate Clerk, was present at the pre-trial motion across the hall from the jury trial.

On August 16, 2016 (the same day as voir dire and the jury trial), as soon as the judge denied my verbal pre-trial motion for continuance, I told the judge, "Don't let a room full of jurors sway your decision," and he shot back something about, "I remember you..." and for me not to question his "jurisdiction." He may have even said I was one of those sovereign people.

I immediately said it wasn't me and that I would have remembered saying something like that. The judge's erroneous comments are a good reason for them not to provide me with the recording.

After I listened to the jury trial's recording, I spoke to Joni Fields, Magistrate Clerk, about the missing audio (portion of pre-trial motion audio in room across from jury trial room). She verbally told me in the public hallway in front of the magistrate clerk's window that the recording didn't have to be given by law. So the recording of the motion just before voir dire had been decided not to be provided to me.

ARGUMENT

I.

The magistrate judge said absolutely nothing in response to the interjection/testimony from the audience is worse behavior than the interjection itself. The judge is to remain impartial, keep order in the court, and not work in tandem with one particular side, in this case the judge was working in tandem with the state and no longer was impartial. I SUFFERED PREJUDICE as a result. It would have taken a mere few seconds to warn the person interjecting from the audience, not to do so. I had no ability to cross-examine the person testifying from the audience (I suffered prejudice). The piece of paper that the alleged victim's wife walked up to her husband (who was on the witness stand) was never attempted to or admitted into evidence, I never had opportunity to see what was on the paper and I don't believe the judge ever saw what was on the paper. The state (Duffie Stone, Aplin, Alan Wilson, or Jean McCormick) never saw the jury's physical reaction to the interjection, and the reaction was favorable to the prosecution.

THE APPEALS JUDGE SHOULD'VE RULED ON WHETHER I RECEIVED A FAIR TRIAL, THIS WAS A HORRENDOUS ERROR OF LAW AND JUDGEMENT and just reeks like one of so many in this case from beginning to end in the wrongful arrest, conviction, and lack of action/ruling (fair trial) by the appeals hearing judge. Saying I didn't get a fair trial, speaks for itself, and any precedent the state comes up with is apples and oranges.

II.

The state would have you believe that the interjection from the audience "...was helpful..." and "...allowed him (Brian MacDermant) to elicit useful information." (Initial Brief of Respondent, p.7) This could not be further from the truth and is the sleaziest, most nonsensical, preposterous notion that is NOT even debatable. The interjection from the audience was helping the state's case because they didn't want the jury to know that some people at the party were verbally invited. The state wanted you to believe that everyone at the party received an invitation by e-mail. This is why about 1 minute before the audience interjection, the alleged victim's wife kept her mouth shut from the audience when I asked the alleged victim on the witness stand about a different person being verbally invited.

III.

On the day of the incident, the alleged victim never told any police officer or wrote in his written statement, that I grabbed him by the shirt. On direct testimony, the alleged victim said I had him by the shirt. The alleged victim's testimony was silence (never said anything) when I asked him on cross-examination where I grabbed him by the shirt (R. p. 29). He just gestured with hands to his shirt, because he knew he was committing perjury.

There are so many clues pointing to a very, very, strong circumstantial case that the alleged victim did indeed commit perjury. I never grabbed him by the shirt, nor did I shove him or push him, or attempt to injure him. The alleged victim's witness who testified on the witness stand was his crony in politics. This was all about using the justice system by the alleged victim to get revenge. The appeals hearing judge never asked me if I waived my right to argue perjury. The perjury is in the written appeal. I verbally told the appeals judge the interjection and how the magistrate did absolutely nothing about it, because it was easily proven 100% that's what took place (audio of jury trial). (R. p. 29)

IV.

The appeals judge asked inappropriate and irrelevant questions, making the judge biased against me and for the alleged victim. The alleged victim at the time of the alleged crime was an elected official. and the appeals judge learned this by asking irrelevant questions.

V.

[THE MAGISTRATE JUDGE EITHER COMMITTED FRAUD OR IS IN SERIOUS ERROR, AS THE JUDGE NEVER SAID DURING THE TRIAL, "affidavits in lieu of personal appearance by witnesses who live in the area and could have been summoned are hearsay and not admissible as evidence" (Return of Appeal, p.2) This quote appears on p. 17 in INITIAL BRIEF OF RESPONDENT]

Upon receiving an audio copy of the jury trial, I meticulously transcribed the entire trial in order to make sure it was accurate. I did a "Control F" which is a search for word(s), of the transcript, this quote above in bold print was never said during jury trial. **The judge may have typed or written this in a "return" but both witness statements I was seeking to enter were of both witnesses who testified during the trial. These written witness statements show they lied.** Here is an excerpt of what was actually said during the jury trial about these witness statements and the excerpt occurs somewhere between 2:03:31 and 2:11:07:

Judge Brooks: Ah, actually, affidavits are considered heresy because an affidavit can't be cross-examined. If you have a witness they can come into court and testify, but you can't

Officer/State Rice: I have no objection to the picture.

J: you can't introduce ah, ah, an affidavit from a witness who's not here. The picture is

Defendant (Pro se): No, these witnesses are here I mean or I'm not sure I follow you your Honor.

J: Who's affidavits are they?

Def: Joe Devito and Tom Klein.

Rice: Joe Devito and Thomas Klein.

J: Oh, ok. Never the less, they've already testified, so.

Rice: They have. Yes, sir.

J: What's, what's in the affidavit that's different from the testimony that you could not have asked them on cross-examination?

Def: I guess I made a mistake. I don't know. That, that he doesn't all he mentions, Mr. Klein, in his witness statement was the pushing. He doesn't mention that I grabbed his shirt. I never grabbed his shirt. And then Tom but Joe Devito does mention it, so maybe he (Klein) is trying to align his testimony. I can't get inside somebody's head, your Honor.

J: What I'm saying here is that their testimony in court is the evidence to be considered.

Def: I, I guess I forgot to ask him. Um, so, it's not, it's not admissible? It's part of the incident report.

J: You had an opportunity

Def: Ok, I just clarify

J: to cross-examine the witnesses.

Def: I'm very stressed. This is a difficult process yes your Honor. Ok, thank you. It's not admissible. That's the answer. Thank you so much.

CONCLUSION

The wrongful conviction against me in magistrate court should be overturned or the appeals judge's decision reversed.