

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry COUNTY
Court of Common Pleas
Steven H. John, Circuit Court Judge

Case No. 2016-002081

Arden P. Cato, II, #316535

Petitioner,

v.

State of South Carolina

Respondent

PETITION FOR WRIT OF CERTIORARI

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Respondents

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Authorities (Cases)

State v. Cagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No. 06-GS-26-0594

Jamison v. State, S.C. Court of Appeals, Unpublished Opinion No. 2012-UP-437

Jamison v. State, S.C. Supreme Court, 2014 Opinion No. 27454

State v. McCoy, 401 S.C. 363, 737 S.E2d 623 (2013)

State v. Spann, 334 S.C. 618, 513 S.E2d 98 (1999)

In re Rouse, 192 P.3d 949 (Wash Ct App. 2008)

State v. Miller, 379 S.C. 108, 665 S.E2d 596 (2008)

State v. Johnson, 376 S.C. 8, 654 S.E2d 835 (2007)

State v. Simmons, 279 S.C. 165, 303 S.E2d 857 (1983)

State v. Needs, 333 S.C. 134, 508 S.E2d 857 (1998)

OTHER AUTHORITIES

Rule 242, S.C.A.C.R.

Rule 221, S.C.A.C.R.

Rule 240, S.C.A.C.R.

Rule 220(b)(2) S.C.A.C.R.

Rule 29(b) S.C.R. Crim. Pro.

Rule 102, S.C.R.E.

Rule 103, (a) S.C.R.E.

Rule 104(b)(e) S.C.R.E.

Rule 201(b)(e)(f) S.C.R.E.

Rule 401, S.C.R.E.

Rule 602, S.C.R.E.

Questions Presented

I) Was the S.C. Court of Appeals final decision in error with regards to the novel question of law, the Spann Test, State v. Spann, 334 S.C. 618, 513 S.E2d 98 (1999), upholding the consistency of rulings established by Circuit Court Judge Steven H. John in State v. Gagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No.

06-GS-26-0594, and Petitioner Cato's After-Discovered Evidence, wherein both cases the new evidence was obtained in similar fashion, relatable as to application of elements/law and should be ruled on similarly?

II.) In regard to the S.C. Supreme Court discretion or power to grant review in general, was the S.C. Court of Appeals final decision in error concerning the errors in the SLED Ballistics Report that gives preponderance to Petitioner Cato's After-Discovered Evidence, affects substantial constitutional issues directly involved, and makes his convictions null and void at best, and/or require the grant of a new trial at the very least?

III.) Was the final decision of the S.C. Court of Appeals in conflict with a prior decision of the S.C. Supreme Court, in particular Jamison v. State, S.C. Court of Appeals, Unpublished Opinion No. 2012-UP-437, Jamison v. State, S.C. Supreme Court, 2014 Opinion No. 27454, and State v. Spann, 334 S.C. 618, 513 S2d 98, (1999) concerning Rule 29(b) S.C.R. Crim. Pro. Motion after guilty pleas in reference to the Petitioners Initial Brief, Final Brief, and Petition for Rehearing in this case by way of an opinion/ruling in Petitioner Cato's favor?

STATEMENT OF THE CASE

Arden P. Cato, II, was indicted at the Harry County

September 2005 Grand Jury Term for two counts of ABNLIK and Murder. J. M. Long, III represented him. On July 17, 2006 Petitioner plead guilty as indicted. He was sentenced to S.C. D.C. for a term of 42yrs for Murder and 20yrs for each ABNLIK to run concurrently.

Petitioner proceeded Pro Se and filed a 29(b) S.C.R. Crim. Pro. Motion for New Trial Based on After-Discovered Evidence with the Horry Co. Clerk of Court on March 14, 2016. The Circuit Court Judge Steven H. John issued an Order denying the Motion filed July 19, 2006. Petitioner filed a Motion to Alter or Amend Judgement on August 10, 2016. Circuit Court Judge issued an Order denying that motion filed September 15, 2016. Petitioner filed a Notice of Appeal to S.C. Court of Appeals on October 3, 2016. S.C. Court of Appeals issued an Order Affirming the Circuit Court Judge decision on October 17, 2016. Petitioner filed his Petition for Rehearing on November 13, 2018. S.C. Court of Appeals issued an Order denying Petition for Rehearing on December 19, 2018.

This is Petitioners Petition for Writ of Certiorari to the S.C. Supreme Court which proceeds as follows:

ARGUMENT

I) The S.C. Court of Appeals final decision was in error with regards to the novel question of law, the

Spann Test, State v. Spann, 334 S.C. 618, 513 S.e2d 98 (1999), upholding the consistency of rulings established by Circuit Court Judge Steven H. John in State v. Cagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No. 06-65-26-0594, and Petitioner Cato's After-Discovered Evidence, wherein both cases the new evidence was obtained in similar fashion, reliable as to application of elements/law and should be ruled on similarly. 📌

Petitioner Cato asks the S.C. Supreme Court to take special consideration of similar established law by the Circuit Court Judge in this case, State v. Cagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence. This case mirrors Petitioner Cato's case in the aspects of how the after-discovered evidence that was ruled on to grant the new trial was obtained, and how the new evidence of witness testimony "attacks the credibility of a major piece of evidence the State used." The after-discovered evidence in the case of Cato attacks the credibility with errors in the SLED Ballistics Report, the shots fired vs wounds inflicted/bullets to shell casings found ratios. The after-discovered evidence in Cato's case will change the outcome in the event of trial with witness inference and identification of someone who is not Petitioner, that was on the inside of the nightclub shooting and inflicting harm on the victims. (P. pg 15-24) (See Petitioner's Initial Brief, Final Brief, and Petition for Rehearing on Respondent's Record.)

Petitioner Cato is entitled to the very same 'fundamental fairness' and correct application of Spann, that this same Circuit Court Judge gave Gagnon. This Court will find that the S.C. Court of Appeals final decision was in error in regards to the novel question of law upholding the consistency of rulings established by Circuit Court Judge Steven H. John in State v. Gagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No. 06-65-26-0594, and Petitioner Cato's After-Discovered Evidence wherein both cases the new evidence was obtained in similar fashion, reliable as to application of elements/law and should be ruled on similarly.

II.) In regard to the S.C. Supreme Court discretion or power to grant review in general, the S.C. Court of Appeals final decision was in error concerning the errors in the SLED Ballistics Report that gives preponderance to Petitioner Cato's After-Discovered Evidence, affects substantial constitutional issues directly involved, and makes his convictions null and void at best, and/or require the grant of a new trial at the very least.

It will please this Court that the State's claim that Petitioner "confusing" Item 9 M.B.P.D. and Item 9 SLED is very much to the contrary. The SLED Ballistics Report is one report. The title Heading on this report clearly shows that all of the ballistics evidence was compiled by one Agency, South Carolina Law Enforcement Division

Forensics Laboratory Report. All of the ballistics evidence in this case, one report, is signed as correct by one SLED Examiner, Mr. Dan DeFreese. (Pgs. 26-32) There is no confusion. The fact is that Item 5, a .380 shell casing is marked to be paired to Item 9, a .9mm bullet. This is an obvious error in the SLED Ballistics Report. A .9mm bullet cannot come from a .380 shell casing.

That is more than a scintilla of evidence, that had it been exposed and/or known to the defense, it would have been used to change the outcome of this case.

Affecting constitutional issues directly involved, Petitioner was, and is still being able to put on an affirmative defense due to a lack of access to evidence of a ballistics report that substantiates accuracy of the events on the night in question. Rule 103(a) S.C.R.E. (Error may not be presented upon a ruling which admits or excludes evidence, unless a substantial right is affected). (See Petitioners Initial Brief, Final Brief, and Petition for Rehearing on Respondents Record.)

This Court can agree that this is a matter that can be solved by the grant of a new trial.

III.) The final decision of the S.C. Court of Appeals is in conflict with a prior decision of the S.C. Supreme Court, in particular Jamison v. State, S.C. Court of Appeals Unpublished Opinion No. 2012-UP-437, Jamison v. State, S.C. Supreme Court, 2014, Opinion No. 27454, and

State v. Spann, 334 S.C. 618, 513 S.e2d 98 (1999), concerning Rule 29(b) S.C.R. Crim. Pro. Motions after guilty pleas in reference to the Petitioner's Initial Brief, Final Brief, and Petition for Rehearing in this case by way of an opinion/ruling in Petitioner Cato's favor.

Pursuant to Rule 242 (d)(4), for the sake of direct and concise argument with accuracy, brevity, and clarity, Petitioner asks the S.C. Supreme Court to carefully consider the litigation in his Petition for Rehearing with regard to this Argument III, in this Petition for Writ of Certiorari. The articulation of my Petition for Rehearing related to the Question Presented on the matter of this Argument III will stand and suffice.

Upon review and consideration of my Petition for Rehearing, this Court will find that the final decision of the S.C. Court of Appeals is in conflict of a prior decision of the S.C. Supreme Court, in particular, Jamison v. State, S.C. Court of Appeals, Unpublished Opinion No. 2012-UP-437, Jamison v. State, S.C. Supreme Court 2014 Opinion No. 27454 and State v. Spann, 334 S.C. 618, 513 S.e2d 98 (1999), concerning Rule 29(b) S.C.R. Crim. Pro. Motions after guilty pleas in reference to Petitioner's Initial Brief, Final Brief, and Petition for Rehearing in this case by way of an opinion/ruling in Petitioner's favor.

CONCLUSION

Pursuant to Rule 242, S.C.A.C.R. Petitioner respectfully request that the S.C. Supreme Court issue a Writ of Certiorari to review the final decision of the S.C. Court of Appeals.

1-10-18

Date

Respect fully Submitted

Arden P. Cato, II

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Pro Se Petitioner

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PROOF OF SERVICE

I certify that I have served the Writ of Certiorari on A. McGory Wilson, Atty Gen. P.O. Box 11549 Columbia, S.C. 29211, J. A. Richardson, Solicitor P.O. Box 1276 Conway, S.C. 29526, S.C. Court of Appeals, P.O. Box 11629 Columbia, S.C. 29211, and S.C. Supreme Court P.O. Box 11330 Columbia, S.C. 29211 by depositing a copy of it in US mail postage prepaid on

1-10-18

Date

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