

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenwood County  
Frank R. Addy, Jr., Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2016-001004  
\_\_\_\_\_

STATE OF SOUTH CAROLINA,

Appellant/Respondent,

vs.

EDWARD DEAN,

Respondent/Appellant.

\_\_\_\_\_  
**STATE'S PETITION FOR REHEARING**  
\_\_\_\_\_

Pursuant to Rules 221 and 240, SCACR, the Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended. In so doing, the State maintains all its prior arguments as set out in its briefs and at oral argument.

This Court's opinion finds evidence supports the trial court's grant of a new trial for Dean's burglary conviction because during Gaston's guilty plea, Assistant Solicitor Lance Sheek indicated the State promised to make Dean's cooperation known to the plea court. However, this obfuscates the fact Judge Addy **declined** to find there was an undisclosed plea agreement and that a discovery violation occurred.

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During the motion for new trial, Solicitor Stumbo adamantly denied there were any undisclosed deals with Gaston prior to Dean's trial. In response, Judge Addy advised, "And on the first question **about a deal for any of the testifying co-defendants**, Solicitor, I concur with you. I don't see where the Court has any reason to doubt the representations that have been made by the attorneys for the State." R. p. 667. That is definitely not a finding by Judge Addy that a discovery violation occurred. It is, if anything, a finding a discovery violation did not occur.

Judge Addy further advised, "[W]hat this Court is struggling with more than anything else is the integrity of the Court, not so much your integrity, Solicitor. That's not – **that's beyond question**. But the Court is more concerned about the promises that I had made to Mr. Dean, or the Court had made to Mr. Dean, to retain jurisdiction over the other co-defendants." R. p. 669, lines 10-23. Finally, Judge Addy advised Solicitor Stumbo, "And quite honestly, the Court is basing this motion on the assurances which the Court gave to Mr. Dean as opposed to any assurances which your office may have made to anyone or may not have made to anyone else. . . . **Your integrity, I have no reason to doubt it.**" R. p. 675, lines 8-14. Judge Addy's comments in this regard further show he was not finding that there was an undisclosed plea deal.

Of course, Solicitor Stumbo explained Sheek misspoke at Gaston's plea and that Assistant Solicitor Shannon Odom insisted she did not make this promise to Gaston or his attorney. Obviously, Gaston's attorney, Stephen Geoly, would know if there were any plea deals. He advised Judge Russo that Gaston "went into this, Your Honor, with no deal. **He had no deal.**" R. p. 435, lines 20-21. It simply strains credulity that the State and Geoly schemed to hide from Dean's counsel that the State would let a plea judge know Gaston testified. Obviously Geoly could on his own

advise the plea court that his client testified on behalf of the State, and obviously the State could not deny Gaston testified for the State, notwithstanding any alleged negotiations occurring prior to Dean's trial.

This Court should grant the petition for rehearing because this Court overlooked the fact that Judge Addy declined to find the existence of an undisclosed plea bargain and that a Brady violation occurred. The present opinion stands in contravention of Judge Addy's actual findings.

The reason Judge Addy granted a new trial was not for a Brady violation due to an undisclosed plea bargain, but because he promised Dean he would sentence the co-defendant. He further declined to find Solicitor Stumbo's failure to plea Gaston in front of Judge Addy was willful, advising:

I firmly – it is being represented to me that the fact that I have retained jurisdiction was not communicated to the Solicitor. I believe the Solicitor when he says he didn't recall it. And that's very easy to believe because I – you know, this was a big case. I knew that we had had this hanging out here for some period of time. And even knowing it was a big case, even knowing that this motion for new trial was hanging out here or a downward departure in sentence was hanging out there, my recollection got cross wired.

R. p. 672, lines 5-23.

Absent an actual Brady violation, Dean has no legitimate interest in the outcome of his codefendant's case and therefore it was error to grant a new trial. The fact that Gaston was sentenced by another judge does not warrant Dean being granted a new trial. State v. Benton, 85 S.C. 107, 67 S.E. 143 (1910) (finding error where the new trial was granted for a legally insufficient reason). Casting a wide net by couching the rationale of a new trial as defending the "integrity of the court" does not validate the extreme action of impeaching a jury's verdict. Judge Addy granted a new trial

on an insufficient basis, concern over a promise to Dean, not a concern over whether Dean received a fair trial; and therefore, he made an error of law.

**CONCLUSION**

For all of the foregoing reasons, this Court should grant the petition for rehearing and reverse the trial court's grant of a new trial.

Respectfully submitted,

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May 22, 2019

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Appeal From Greenwood County  
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No: 2016-001004

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THE STATE,

Respondent,

v.

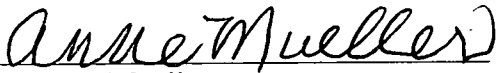
EDWARD LEE DEAN,

Appellant.

**PROOF OF SERVICE**

I, Anne Mueller, certify that I have served the within State's Petition for Writ of Certiorari on Appellant by depositing one copy of the same in the United States mail, postage prepaid, addressed to his attorney of record, E. Charles Grose, Jr., Esquire, 404 Main Street, Greenwood, SC 29646.

I further certify that all parties required by Rule to be served have been served.  
This 22<sup>nd</sup> day of May, 2019.

  
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