

State OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Janelle L. Ervin #376322
Applicant,

C/A No. 2018-000973

vs
The State Of South Carolina
Respondent

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JUL 10 2019
SC Court of Appeals

Please Take Notice, applicant bring his "Memorandum of law", in opposition of respondent motion of "Summary Judgment" or Motion to Dismiss applicant (PCR).

Applicant comes pursuant of the "S.C. Code Of Law § 17-27-20(a) section (1), (2), (3), (4), (5) and (6)

- IDENTIFICATION -

Applicant provides Transcript Mark as: ["Exhibit: (A)-(A)-Tr. p. 39 (19-25), Through Tr. p. 41 (1-3)"]

Applicant states the state provided a means to create an identification procedure so unduly suggestive to activate an system to alert the victims (via) phone, to come to an in-court preliminary hearing, as an suspect was in custody with only the applicant at the defense table, the victim asserted applicant was him.

Applicant provides. Transcript Mark as: ["Exhibit: (A)-(A)-Tr. p. 74 (3-25) Through Tr. p. 80 (1-12)"]

Applicant established the exhibiting of an in-court, voice recognition, and out of court identification as unduly suggestive in violation of the law and Const. Amend. 6th and 14th. see: "Stovall v. Denno", 388 US. 293 (1967); citing "Neil v. Biggers", 409 US. 188 (1972).

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- Applicant provides Transcript Mark as ["Exhibit: (A)-(A) - Tr. p. 14 (23-24), Through Tr. p. 19 (1-10)"]

The state used in its case Mrs. Jessica Dawn Parker, (the victim), which could not give an positive identification, nor sign the photo line-up.

- Applicant provides Transcript Mark as ["Exhibit: (A)-(A) - Tr. p. 19 (14-24), through Tr. p. (11-24)"]

Applicants here-to, being the only person at the preliminary hearing was so arranged to prejudice applicant of his due process right as applicant was the only suspect at defense table.

- Applicant provides Transcript Mark as ["Exhibit: (A)-(A) - Tr. p. 78 (19-25), Through Tr. p. 79 (1-8)"]

The state by and through its occupation, has the knowledge to know, providing the victims with an systematic notification, that an suspect was in custody, would perfect an high chance of unduly suggestive and irreparable in-court identification, by cunningly drawing the victim to applicant preliminary hearing, prejudicing the applicant. For such, the trial court error in allowing. see "Foster v. California," 394 US. 440, 442 (1969).

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- Jury Discrimination -

• Applicant provides Transcript Mark as: ["Exhibit: (A)-(A)-Tr.p.124 (9-25), Through Tr.p.133 (1-8)"]

Applicant stood trial with an all (white) - "in race" victim(s) family. Applicant is a (Black) - male - "in race". During applicant trial, the "Jury selection" was ["A"] (White), with ["O"]nly ["O"]ne ["B"]lack ["M"]ale; with the remainder to be ("White"). Juror Number# (14) Fourteen, "Mr. Gerald Beach", was the only ["Black"] juror on the whole jury panel. The "United States Supreme Court" has long made the ["L"]and ["M"]ark ["C"]ase in "Batson v. Kentucky", 476 US. 79 (1986), this type of conduct of racial discrimination in jury selection, always prejudice the defendant of an impartial trial as mandated. This 6th and 14th Const. Amend. Violation Warrant remand... see: "state v. Grandy", 306 SC. 224 (1991); "state v. Adam", 307 SC 368 (1992) and "state v. Oglesby", 298 SC. 279.

- Actual Innocence -

• Applicant provides Transcript Mark as: ["Exhibit: (A)-(A)-Tr.p.8 (19-25), Through Tr.p.9 (1-25)"]

July -11th -2016, the (victim) Mrs. Jessica Dawn Parker, had establish the time of the crime was at or about 3:00 p.m., that afternoon.

• Applicant provides Transcript Mark as: ["Exhibit: (A)-(A)-Tr.p. 57 (6-8)"]

Jermaine Lowery, had Technical default's with his mobile device Days before the "July-11th -2016", incident, applicant provided Mr. Lowery, with one of applicant secondary mobile devices.

- Applicant Provides Transcript Mark as: ["Exhibit: (A)-(A) - Tr. p. 98 (1-25), Through Tr. p. 100 (2)"]

After Detective Mr. Branham, ["Proffer"], applicant attorney and Mr. Branham, came to an reality conclusion, that applicant could not have been at the July-11th-2016, crime with Mr. Lowery. Furtherly, the evidence with-drew applicant at scene.

see: ["Exhibits: (J), (K), (L), (N) and (P) - Evidence Log"]

- Applicant Provides Transcript Mark as: ["Exhibits (A)-(B) - Tr. p. 97 (14-25) Through Tr. p. 99 (1-2); also Tr. p. 114 (1-25), Through Tr. p. 119 (1-9)"]

Applicant points the record would reflect by the States Detective and applicant attorney, that applicant was calling the device of Mr. Lowery, during July-11th-2016, while Mr. Lowery, was in commission of committing the crime.

- Applicant Provides Transcript Mark as: ["Exhibit: (A)-(B) - Tr. p. 119 (19-25), Through Tr. p. 136 (1-11)"]

After the collection of applicant mobile device and Mr. Lowery, mobile device; the states Detective Mr. Alex Clark, stated the (GPS) of applicant device on: "July-11-2016", was calling Mr. Lowery, device at 2:37 p.m., while Mr. Lowery, was committing the crime, as applicant could not have been there.

see: ["Exhibits: (O), (Q), (R), (S) and (T) - Phone Data-"].

- Applicant Provides Transcript Mark as: ["Exhibits (A)-(C) - Tr. p. 114 (14-25), Through Tr. p. 45 (1-10)"]

The State (USG) Expert Witness Mr. Jeffrey Allen Rasmussen, (Senior Tech Cell Analyst); stated on July-11th-2016; applicant was calling Mr. Lowery, an hour away from Mr. Lowery, while Mr. Lowery was committing the July-11th-2016, crime. see: ["Exhibit: (U) - "Tactical Analysis Report"-]

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- Applicant provides Transcript Mark as: ["Exhibit:(A)-(A)-72(13-25) Through Tr.p. 73 (1-4)"]

After Mr. Lowery, conducted the crime, Mr. Lowery, return to applicant location and return the applicant secondary mobile device back to him.

- Applicant provides Transcript Mark as ["Exhibit:(A)-(A)-Tr.p. 84 (14-17)"]

After applicant arrest, applicant provided the state detective of Mr. Lowery, having the secondary device.

- Applicant Provides Transcript Mark as: ["Exhibit:(A)-(A)-Tr.p. 84 (17-25), Through Tr.p. 86 (1-24)"]

After applicant provided the state Detective the pass code and information to the device, an search warrant was provided for the device
see: ["Exhibit:(A)-Search Warrant"]

- Applicant Provides Transcript Mark as: ["Exhibit:(A)-(A)-Tr.p. 86 (9-25), Through Tr.p. 89 (1-24)"]

The state Detective obtained Search Warrants for applicant and Mr. Lowery, properties, and all the substance was located in only Mr. Lowery home.

see: ["Exhibit:(B), (C) and (D)-Search Warrant"]

- Applicant Provides Transcript Mark as: ["Exhibit:(A)-(A)-Tr.p. 94 (18-25), Through Tr.p. 97 (1-25)"]

The state had produced from it's case of "July 11th-2016", Mr. Lowery, (DNA) and Finger, was at scene
see: ["Exhibit:(F) and (G)-Evidence Log-"]

After an perfected collection of the states evidence; No (DNA) and Finger Prints was of applicant
see: ["Exhibit:(H) -Arrest Warrant-"]

Where fore; applicant was still arrested of crime.

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Applicant states that all (DNA), Finger Prints, properties and
investigative directed it self to Mr. Lowery; not applicant.
see ["Exhibit's: (V) and (W) - Investigation / Summary"].

Applicant provided with-in the records an Genuine Issue
Of Material Fact's, through the : S.C. Fed. R. Civ.
Proc. 56 (e); "Anderson v. Liberty Lobby Inc.", 477 U.S. 242 (1986).
Applicant has also established his innocence. see: "Ince Wins-
hip", 397 US. 358 (1970). see

Subject Matters Jurisdiction

- Applicant states the Grand Jury lost subject matters of
Jurisdiction, causing the indictment to be void as the
evidence was not proper before the court, as the lower
courts lost jurisdiction to impose sentence and conviction.

see: ["Exhibit: (x) - Grand Jury Indictment"].

Pursuant to: "S.C. Code Ann § 17-19-90 (a)", and "Robertson v.
State", 278 SE. 2d. 770 (SC. 1981); applicant request for his
release from the South Carolina Dept. Of Corr.

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- INEFFECTIVE ASSISTANCE OF COUNSEL -

- Under "Strickland v. Washington," 466 U.S. 668 (1984), Applicant raise the (2) two following questions before this courts as follows: (1), Did Counsel conduct so undermine the proper functioning of the adversarial process that the trial can not be relied on as having produced a just trial and (2), was applicant prejudiced by such norm of the counsel performance that the out come would've been different.

(1). Applicant will by the (first) prong of "strickland", that counsel performance was deficient, that counsel made errors so serious, that counsel was not functioning as the counsel guaranteed the applicant by the sixth amendment.

- 1). Counsel failure to provide preliminary hearing transcript to object of the unduly suggestive in court identification as the state knowingly arrange with out having a six man voice recognition or photo identification in court hearing.
- 2). Counsel failure to object of the Discriminative jury selection, as there were all white jurors, and leaving an remainder of (4) one single black juror on the entire jury panel from the jury selection, with an all white victims family.
- 3). Counsel failure to raise actual innocence, when evidence provided evidence of the state Detective witness and the state expert tech witness, that applicant was an whole hour away from the crime by data in his cell phone.
- 4). Counsel failure to raise an objection of trial judge abuse of discretion for failure and lack of evidence by the state, to impose an sentence or conviction on applicant. see: "State v. Martin", 533 SE.2d. 572 at. 574 (SC, 2000), as counsel failure to request an jury instruction for actual innocence.

(2). Applicant by the (second) "strickland" prong, states that the deficient performance prejudiced the defense as counsel errors were so serious as to have deprived applicant of an fair and impartial trial, and if such errors were objected to or raised properly, the result and the outcome would result to an reliability, the out come would have been different.

State Of South Carolina
County Of York

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Appellant

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Proof Of Service

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Appellate has provided each parties with the Below:

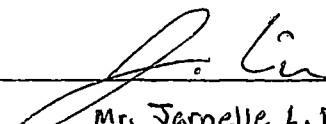
To South Carolina Court Of Appeals
P.O. Box 11629
Columbia, SC 29211

- & -

To Attorney General Office
P.O. Box 11549
Columbia, SC 29211

Respect fully
Submitted,

7-2-19


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