

Untonyo Johnson #211138

AB-08

Lieber Correctional Institution

P.O. Box 205

Ridgeville, S.C. 29472

The South Carolina Court of Appeals

Jenny Abbott Kitchings

Clerk

1220 Senate Street

Columbia, South Carolina 29201

RECEIVED

MAR 17 2020

SC Court of Appeals

Re: The State v. Untonyo Ferguson Johnson

Appellate Case No. 2017-001673

Dear Court of Appeals,

Please note that at this present moment I have been notified that my case has been submitted on the record on appeal during this February 2020 term without oral argument, and upon this knowledge I pray that the South Carolina Court of Appeals allow me to petition the Court to review my "Napue Claim" within the interest of justice that originated from a issue that my Appellate Defender filed within my Direct Appeal.

The issue is "Whether the trial court erred in admitting Mark Edmonds' in-court identification of Appellant, where his first identification came while he was hospitalized after being shown a single photograph rather than a line-up?"

Please take notice to the fact that before the jury was sworn, a hearing was held to determine the admissibility of victims identification of Appellant. (Tr. 38-50) Within this hearing there is clear and direct evidence to prove that the assistant solicitor intentionally tampered with witnesses and knowingly used perjured testimony within his pursuit of deceiving the trial judge in order to obtain a wrongful conviction.

Thank You

Untonyo Johnson

Untonyo Johnson,

Index

Petition to Court of Appeal

2 pages

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Argument

4 pages

MAR 17 2020

Dismissal of Complaint from

SC Court of Appeals

1 page

Office of Disciplinary Counsel

Response back from Appellate Defender

2 pages

Date: 12-17-2018

Response back from office of

1 page

Attorney General

Response back from Appellate Defender

2 pages

Date: 9-26-2019

Clock Stamp copy of letter of request

4 pages

Calhoun County Sheriff's Office

1 page

Supplementary Incident Report Narrative

#3

Argument

The question presented is whether on these facts the failure of the prosecutor to correct the testimony of the witness which he knew to be false denied petitioner due process of law in violation of the Fourteenth Amendment to the Constitution of the United States

A prosecutor's allowing a prosecution witness to testify falsely when the truth is easily verifiable not only violates *Napue*, which prohibits the knowing presentation by government of false evidence, but would also amount to professional misconduct.

The Supreme Court has "established that a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the Fourteenth Amendment." See *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3L. Ed. 1217 (1959). And the "same result obtains when the [prosecutors], although not soliciting false evidence, allow [i]t to go uncorrected when it appears." *Id.* In other words a "conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the *198 jury." See *United States v. Chavez*, 894 F.3d 593, 601 (4th Cir. 2018) (quoting *United States v. Agurs*, 427 U.S. 97, 103,

96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976).

A claim of trial error predicated on these principles is generally characterized as a Napue claim. We have recognized, however, that a meritorious Napue claim requires "a showing of the falsity and materiality of testimony." See *Daniels v. Lee*, 316 F.3d 477, 493 (4th Cir. 2003) (internal quotation marks omitted).

Supporting Trial Hearing Testimony:

Tr. 150, 14-18

Tr. 152, 20-24

Tr. 153, 2-6

Tr. 89, 5-21

Tr. 90, 7-25

Tr. 95, 3-25

Tr. 96, 1-2

Tr. 150, 17-22

Tr. 107, 24-25

Tr. 108, 1-17

Tr. 151, 14-25

Tr. 49-50

Judge Wright's message, that false testimony in any judicial proceeding, even a civil deposition, is intolerable in our judicial system, was rendered only a month and a half after the supreme Court signaled its own

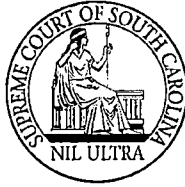
lack of concern for false testimony - even in a capital case. That signal came in *Strickler v. Greene*. As I shall demonstrate, the seeds of *Strickler* were sown as early as 1976, when the Supreme Court decided *United States v. Agurs*. The majority in *Strickler* relied on its *Agurs* analysis, as developed in subsequent cases, and barely waved at an earlier line of cases that demonstrated the Court's unwillingness to permit prosecutors to put on testimony that created a false impression of the truth, whether or not such testimony technically amounted to perjury. As a result, the *Strickler* Court indicated that it did not find false prosecutorial testimony shocking and demonstrated that it might not even know false testimony when such testimony stood naked before it.

Before the jury was sworn, a hearing was held to determine the admissibility of victim's identification of Appellant. (Tr. 38-50). The trial judge noted that victim made his identification with absolute certainty and determined that under the totality of the circumstances the identification was reliable, and therefore admissible. (Tr. 55-57).

The supporting trial hearing testimony should find clear and convincing evidence supporting this attorney acted with venal intent in violating the Rules of Professional Conduct prohibiting knowingly

making false statements of fact to a tribunal, engaging in conduct involving dishonesty, engaging in conduct prejudicial to administration of justice, and engaging in conduct that reflects adversely on fitness to practice law when he made false statements intended to mislead hearing judge.

Conviction obtained through use of false testimony, known to be such by representatives of the state, is a denial of due process



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

John S. Nichols
Disciplinary Counsel

Kelly B. Arnold
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

January 21, 2020

PERSONAL AND CONFIDENTIAL

Untonyo Johnson #217138
Lieber Correctional Institution
Post Office Box 205
AB-0008-B
Ridgeville, SC 29472

RE: Lawyer: Theodore Nichols Lupton, Esquire
File Number: 20-DE-L-0069

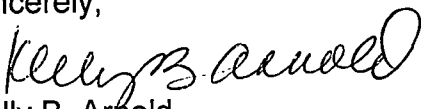
Dear Mr. Johnson:

This office has received your complaint involving Theodore Nichols Lupton, Esquire. The authority of this office and the jurisdiction of the Commission on Lawyer Conduct concerning complaints against lawyers are limited to issues of whether a lawyer has committed misconduct or is incapacitated within the guidelines of the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

These rules do not apply to matters related to whether or not the outcome of a case handled by a lawyer was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters that must be addressed by you to the court or raised by you on appeal using appropriate appellate procedures.

We find that the allegations you have raised involve legal matters and, as such, are not within the jurisdiction of this office. For this reason, your complaint is dismissed pursuant to the provisions of Rule 413-19(a), SCACR.

Sincerely,


Kelly B. Arnold

KBA/clg



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 17, 2018

Untonyo Johnson, #217138
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Your Case

Dear Mr. Johnson:

Enclosed are the documents you sent us in your last letter dated November 19, 2018. I am sending them back to you, as you requested.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Taylor D Gilliam
Appellate Defender

TDG/mba

Enclosure

Antonio Johnson #217138

AB-08

Lieber Correctional Institution

P.O. Box 205

Ridgerville SC. 29472

Taylor D. Gilliam / Appellate Defender

P.O. Box 11589

Columbia, S.C. 29210

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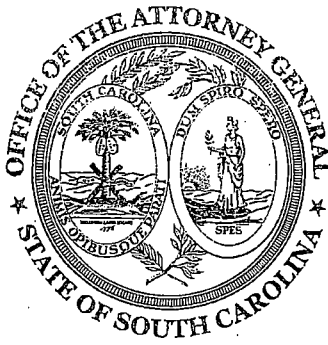
APPELLATE DIVISION

Dear Mr. Gilliam,

Enclosed within this correspondence is an Initial Brief that I have submitted to Calhoun County Clerk of Court in support of my open Complaint that I filed in there office for being illegally prosecuted, and I pray that you will take the appropriate amount of time out to review it and also the rest of the information I have provided with it because I believe you may find some helpful things within some of these documentations.

Besides my brief I also provide Captain, John P. Regalis, incident report narrative to prove that, Harry James Monroe, was not the investigating officer that took the victim's statement at the hospital. (See Tr. 49, 50, 150).

Mr. Gilliam, thank you for providing me with copies of the three exhibit's I asked for because that really helps me expose the improper influence that the assistant solicitor's misconduct had on the jury in his attempt at concealing some of the illegal activity conducted



ALAN WILSON
ATTORNEY GENERAL

December 21, 2018

Mr. Untonyo Johnson
SCDC #217138 AB-08
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

Dear Mr. Johnson:

This letter is in response to your letter to the South Carolina Attorney General's Office, regarding your complaint against an Assistant Solicitor for Calhoun County, South Carolina, in the prosecution of your state case. Please be advised that our office is unable to respond to your concern since you are represented by counsel through the South Carolina Commission on Indigent Defense. By copy of this letter, I am advising Taylor Gilliam, Appellate Defender with SCCID, of your inquiry.

We regret we cannot be of assistance to you.

Sincerely,

Scott Matthews
Assistant Attorney General
Bar#: 101464

SM/se

cc: Taylor Gilliam, Esquire, (SCCID)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 26, 2019

Untonyo Johnson, #217138
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Your Case

Dear Mr. Johnson:

Enclosed is a copy of page 7 of the state's brief that was missing from the copy I originally sent you.

If you have any questions or concerns, feel free to contact me.

Sincerely,

Taylor D Gilliam
Appellate Defender

TDG/mba

Enclosure

Issue Preservation

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). “Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review.” State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). “Because a ruling on a motion *in limine* is preliminary and subject to change based on developments at trial, a contemporaneous objection must be made again when the evidence is presented at trial. State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009).

Before the jury was sworn, a hearing was held to determine the admissibility of Victim’s identification of Appellant. (Tr. 38-50). The trial judge noted that Victim made his identification with absolute certainty and determined that under the totality of the circumstances the identification was reliable, and therefore admissible. (Tr. 55-57). When Victim identified Appellant in front of the jury, Appellant did not renew his objection. (Tr. 77, 86). Because Appellant did not renew his objection to Victim’s identification of Appellant, he failed to preserve any issue related to this testimony for appeal. Therefore, this issue is not preserved for further review.

No Abuse of Discretion

Assuming that this issue is preserved for appeal, the trial judge did not abuse her discretion in admitting Victim’s identification because it was reliable and not unnecessarily suggestive.

“When a defendant challenges the admissibility of a witness’s identification, trial courts employ a two-prong inquiry to determine whether due process requires suppression.” State v.

FILED

Untanya Johnson #217138

2019 DEC 13 P 3:24

AB-08

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

Lieber Correctional Institution

P.O. Box 205

Ridgeville, S.C. 29472

Kenneth Hasty

Calhoun County Clerk of Court

P.O. Box 709

Saint Matthews, S.C. 29135

Dear Clerk of Court,

Please Take Notice to the fact that within my on going pursue at obtaining freedom and justice I have discovered why Calhoun County Assistant Solicitor, Ted Lupton, tampered with witnesses during an in camera pre-trial hearing prior to my trial, to suppress the victims in-court identification of me.

Witness Tampering: which can mean anything from coercing or intimidating a witness to getting a witness to lie on the stand or concealing a witness is generally not permitted.

A code of ethics exists for prosecutors in the United States, prosecutors must comply with the code of Professional Responsibility that applies to all attorneys

Failure to comply with the code of ethics is also considered prosecutorial misconduct, although the

penalties for such failure are usually limited to loss of the license to practice law and do not encompass criminal sanctions.

Prosecutorial misconduct could interfere with or jeopardize a defendant's protected right to a fair trial and could thus jeopardize the foundations of the justice system as a whole.

High standards are set to avoid prosecutorial misconduct because accused people are guaranteed the right to a fair trial. In the United States, the Constitution ensures this right.

Now Please Take Notice to how the prosecutor deceived the trial court judge in order to obtain a favorable decision within the pre-trial hearing by concealing the unnecessarily suggestive procedure used by law enforcement officer, John P. Regalis, that had me illegally identified as the suspect that committed this crime knowing that there was never any physical or forensic evidence that ties me to the incident location or to a firearm.

Within this in camera hearing prior to trial Assistant Solicitor, Ted Lupton, intentionally introduce, Harry James Monroe, (a brief foundation witness) as Investigator Monroe who interviewed the victim while he was in the hospital (See Tr. 49-50) in order to conceal the fact that the actual investigating officer, Captain John P. Regalis who interviewed the victim in the hospital

not only showed the victim one picture of me to have the victim identify me as the suspect in this crime, but also showed the victim the video recording that Jimmy Orso, the lead investigator recorded onto his phone that obtained an audio statement given by the victim's girlfriend where she specifically points me out as the person who committed this crime.

Also Please Take Notice to how the Assistant Solicitor cleverly admitted the victim's girlfriend out-of-court statement into evidence by pausing the video in open court before this audio statement could be heard by the trial court judge and my legal defense so he could improperly influence the jury knowing that this hearsay statement was inadmissible because the victim's girlfriend did not testify at this trial hearing in which denied me my 6th Amendment right to confront all of my accusers.

If a prosecutor engages in an improper action by violating a law, this is a form of prosecutorial misconduct. In some cases, if the prosecutor's misconduct was egregious enough, he could face criminal charges or be held in contempt of court.

Not only did Ted Lupton's prosecutorial misconduct denied me a fair and impartial trial hearing but please find enclosed copies of my Appellate Defender's and Assistant Attorney General's Initial Brief to see how the illegal and corrupt activity is affecting my direct appeal as well

Here I have also provided the trial hearing transcript page numbers to support the fact that Captain John P. Regalis showed the victim the video recording off of the lead investigating officer, Jimmy Orso's, phone when he interviewed the victim in the hospital.

(Tr. 121, 12-18)

(Tr. 150, 14-25; - Tr. 151, 1-4)

(Tr. 152, 20-25; - Tr. 153, 1-6)

(Tr. 89, 5-25; - Tr. 90, 1-25)

Can you please clock stamp and file this letter and add it to my case file of evidence, and also provide me a copy of this clock stamp letter. Please!

Thank You,

Untonyo Johnson,

Untonyo Johnson,

10-21-19

AGENCY I.D. SUPPLEMENTARY INCIDENT REPORT NARRATIVE
SC0090000 Calhoun County Sheriff's Office

CASE NUMBER
15-547

NCIC
INQ. ENTD.

SUPP # 3	INCIDENT DATE 10/01/2015	INCIDENT TIME 7:16	CASE STATUS A - Active	PAGE 1 of 1 PAGES
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SUPPLEMENT TYPE supplemental	SUPPLEMENT DATE 10/06/2015	SUPPLEMENT TIME 14:10	SUPPLEMENTING OFFICER 105 - Captain John P. Regalis
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NARRATIVE

on 10-1 I spoke with mark edmond at palmetto richland hospital in columbia, sc reference the shooting incident. Knowing he would not be in shape to write I did a video statement from him in his room. I had already received pics of surveillance footage of the suspect at the store fro inv. Orso and williams. Once I met with him I asked him who shot him and he stated he didn't know the suspect's name but was the b/m who he got into an argument with at miranda duke's job in orangeburg. He stated the suspect was cursing and miranda and he told he there wasn't any since in using the "b" word and the suspect got mad and started an argument. Miranda states the guy is a regular that she sees all the time and he has attempted to "holla" at her several times. She was showed the video of the incident at the store the same morning and she identified the defedant as the person mark got into it with. Mark stated he observed the shooter firing multiple rounds at him as the guy he got into an argument with at miranda's store.

Anthony Johnson 2/7/38

AB-08

Lieber Correctional Institution

P.O. Box 205

Ridgeville, S.C. 29472

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SC Court of Appeals

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MAR 13 2020

MAIL ROOM
LIEBER C.I.

The South Carolina Court of Appeals

Clerk: Jenny Abbott Kitchings

1220 Senate Street

Columbia, South Carolina 29201