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In The South Carolina Court of Appeals

MAR 23 2020

SC Court of Appeals

Jamaad D. Thomas,

Petitioner,

vs.

State of South Carolina,

Respondent,

MOTION to Amend to Conform  
to the Evidence

APPELLATE CASE NO. 2018-000196

I come before the honorable Court pro'se with a motion to Amend to conform to evidence Pursuant to Rule 15(b) OF the South Carolina Appellate Court Rules, The evidence In Addition to the Johnson pro'se Response, The evidence Shows Copies of filed motion for Production and inspection of evidence or information which may lead to evidence. In the motion it stated I (petitioner) was requesting Access And counsel was requesting Access to such favorable information that was being held by investigating Officers. It requested 1.) All transcripts made of tape Recored statements made by the accused and by Potential prosecution witnesses. 2.) Names and addresses of all witnesses having knowledge of the offense charged or any other persons who have been interviewed by Solicitor, his investigators, his staff or the investigating Officers, whether subpoenaed or not, in the crime charged. 3.) Record of arrests and convictions of any and all witnesses known to the Solicitors Office, in relation to the case.

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4.) All notes or memoranda, by Police officers or other investigating officers of their conversations with persons who the state expects to or has called before the grand proceedings in connection with the case.

The purpose of the motion was to enable the defendant to properly prepare a defense to the offenses charged and to properly prepare for the examination of any witnesses who may testify in the case.

I Petitioner in per hearing stated that I Aint seen the main statements/transcripts of certain witness that lead to my Arrest (APP. 75 L. 2-5). During the per hearing Defense Counsel was ask did he had transcripts for all 14 statements and he stated no (APP. 89. L. 1-2) Defense Counsel went on to say it wasn't no need to have them transcribed because they didn't relate to any facts that "he" didn't think they could be called to trial (APP. 89. L. 4-8) Defense Counsel stated that the state had three transcribed and the rest of the statements "he" felt like didn't need to be transcribed. (APP. 89 L. 1-25). But I Petitioner requested for all tape recorded statements by potential prosecution witnesses. in the motion for my "preparation" for trial. I Petitioner stated in ~~per~~ <sup>per</sup> hearing I never seen statements/transcripts to see if I had any defenses I Petitioner stated I was just going off what he told me.

Defense Counsel stated that he only took detail notes (APP. 83 L. 16-20) but the purpose of the access to all transcripts made by potential prosecution witnesses was to enable I (petitioner) to properly prepare a defense to the charge and preparation for examination of any witnesses who may testify in the case. The record speaks for itself that everything was done in "Defense Counsel Interest" no to get all transcripts made of transcripts made of tape recorded statements by potential prosecution witnesses "without consultation" with I (petitioner). Standard 4-3.9 points out under duty to keep client informed; advised about the representation

(b). Defense Counsel should promptly comply with the clients reasonable request for information about the matter and for copies of or access to relevant documents, unless the clients access to such information is restricted by law or court orders. Counsel should challenge such restrictions on the clients access to information unless, "after consultation with the client, there is good reason not to do so".

Furthermore in the guilty plea hearing the solicitor stated he had subpoenaed more than 55 other witnesses for the case (~~APP. 13 L. 11-15~~). Defense Counsel testified that there were only 14 he received (APP. 84 L. 1-9) This shows defense counsel wasn't prepared neither I (petitioner) was prepared for trial because they were witnesses that was newly discovered during the guilty plea.

This shows defense Counsel wasn't prepared for cross-examination or a defense to majority of the witnesses that was newly discovered at the guilty plea hearing who may have testified in my case if I went to trial. This also shows defense counsel didn't have access neither I (petitioner) have access to 1.) All transcripts made by potential prosecution witnesses, 2.) names and addresses of all witnesses having knowledge of the offense charge, 3.) Record of arrests and convictions of any and all witnesses known to solicitors office in relation to the case, 4.) All notes by police officers or other investigating officers of their conversation with persons who the state expects to or has called before the grand proceeding in connection with the case. The information that I (petitioner) request in the motion for the preparation for my trial, I (petitioner) stated in the PCA hearing I didn't want to go to trial in the blind not knowing who said what (App. 73 L11-17) - "meaning not prepared". The record speaks for itself that defense ~~Counsel~~ <sup>Counsel</sup> made no efforts in the guilty plea hearing to investigate the newly discovered witnesses "through discovery" ~~in~~ <sup>In</sup> the states case under the authority of Brady vs. Maryland, 373 U.S. 83 (1963); Wapue vs. Illinois, 360 U.S. 364 (1959); Alcorn vs. Texas, 355 U.S. 28 (1957); Mooney vs. Holohan, 294 U.S. 103 (1935); Giglio vs. U.S., 405 U.S. 150 (1972); Moore vs. Illinois, 408 U.S. 786 (1972); and Kyles vs. Whitley, 514 U.S. 419 (1995).

which was filed in the motion for preparation. Standard 4-4.1 Duty to Investigate and Engage Investigators points out (c) Defense counsel investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter. It should always be shaped in the client's best interest, after consultation with the client. Defense counsel investigation of the merits of the criminal charges include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and other, as well as independent investigation. Counsel investigation should include consideration of inconsistency, potential avenues of impeachment of "prosecution witnesses", and other possible suspects and alternative theories that the evidence may raise.

*Kimmelman v. Morrison* 477 U.S. 365, 384 (1986). ✓

- Stating that the adversarial testing process generally will not function properly unless defense counsel has done some investigation into the prosecution case and into "defense strategies".

In *Kimmelman v. Morrison* counsel neither investigated nor made a reasonable decision not to investigate the state case through discovery. Counsel failure to seek discovery was deficient performance because was necessary to ensure the ability to investigate. The assumption is that "discovery of the relevant information" in a timely enough fashion would

have alerted defense counsel to the need to undertake the necessary investigation. It also implicitly recognized that I (~~petitioner~~ <sup>Petitioner</sup>) cannot be expected to provide all the information necessary for counsel investigation. Counsel has a duty to investigate all witnesses who allegedly possessed knowledge concerning the defendant's guilt or innocence.

✓ *Coles v. Payton*, 389 F.2d 224, 226 (4th Cir. 1968)

Counsel must conduct appropriate investigations into the prosecution's case and into, both factual and legal, to determine if matters of "defense" can be developed and allow himself enough time for reflection and "preparation" for trial.

✓ *Wade v. Armontrout*, 798 F.2d 304, 307 (9th Cir. 1986)

Defense counsel failure to investigate was not the result of strategy or a reasonable decision not to investigate but rather (stemmed) from lack of preparation.

✓ *Moore v. United States*, 432 F.2d 730 (3rd Cir. 1970) which noted that adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even

the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge. A competent ~~lawyer~~ has a duty to complete investigation. This shows if defense counsel performance was unreasonable and that the particular and identified acts of omission of counsel were outside the wide range of professionally competent assistance. If counsel had promptly complied with I (petitioner) request for information and made efforts to investigate the state case for a complete investigation for preparation for trial I (petitioner) could have provide all the information for counsel investigation to the witnesses to properly prepare a defense to the charge and states case. This also shows the proceeding would've been different if lawyer/counsel was competent in investigation and preparation.

Conclusion

Based on the foregoing arguments, I (~~petitioner~~ <sup>Petitioner</sup>) would request that this court grant the motion and allow briefing on the above-raised issue in addition to the Johnson pro'se response.

State of SC County of Richland  
 The foregoing instrument was acknowledged before me  
 this 18<sup>th</sup> day of March, 2020  
 by [Signature] Notary Public  
 My Commission Expires 7-27-2024

Respectfully Submitted,  
Jamaad D. Thomas  
 Jamaad D. Thomas

JAMAAD D. THOMAS #354532  
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SC Court of Appeals

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