

Jamaad D. Thomas,
Petitioner,

VS.

State of South Carolina,
Respondent,

In The South Carolina Court Of Appeals

Attachment to Johnson

Pro'se Response

RECEIVED

JUL 21 2020

SC Court of Appeals

Appellate Case No. 2018-000196

In addition to the Johnson Pro'se Response, the evidence shows copies of the 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 to such favorable information that was being held by investigating officers. It requested 1.) All transcripts made of tape recorded 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 person 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 arrest and convictions of any and all witnesses known to the solicitor's office in relation to the case. 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 (petitioner) 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 PCR hearing stated that I didn't see the main statements / transcripts of certain witnesses that lead to my arrest (APP. 75 L. 2-5). During the PCR hearing defense counsel was asked did he have 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 only transcribed three 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 PCR hearing I never seen statements / transcripts to see if I had any defenses. I (petitioner) stated I was just going off what defense counsel 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" not to get all 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 to such information is restricted by law or court orders. Counsel should challenge such restrictions or 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 the state subpoenaed that was newly discovered at the guilty plea.

hearing who may have testified in the case if I (petitioner) went to trial. This also shows defense counsel didn't have access neither I (petitioner) have access to all 1.) 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 ~~jury~~ 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 per hearing I didn't want to go to trial in the blind not knowing who said what (App. 73 L-11-17) - "meaning not prepared"

The record speaks for itself that defense counsel made no efforts in the guilty plea hearing to investigate the newly discovered witnesses "through discovery"

In the States case under the Authority of Brady vs. Maryland, 373 U.S. 83 (1963) Napue 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 Kyle vs. Whitley, 514 U.S. 419 (1995).

Which was filed 1/19/12 in the motion for preparation.

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 investigate nor made a reasonable decision not to investigate state case ~~through~~ through discovery. Counsel failure to seek discovery was deficient performance because 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) cannot be expected to provide all the information necessary for counsel investigation because defense counsel made no efforts to investigate the newly discovered witnesses the state had subpoenaed who may have testified at I (petitioner) trial. 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) states

- Counsel must conduct appropriate investigations into the prosecution 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 (8th 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 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 complex 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 wouldve been different if lawyer / counsel was competent in investigation and preparation. In addition the copies show that in the rule 5 disclosure response the state didn't provide I (petitioner) with everything that was requested in the motion which was all transcripts of statements, of which the state subpoenaed made by prosecution witnesses.

Conclusion

Based on the foregoing argument, I (petitioner) would request that this court allow briefing on the above-raised issue in addition to the Johnson pro se response.

Respectfully Submitted,

Damaad D. Thomas

SWORN OR AFFIRMED TO SUBSCRIBE BEFORE ME THIS 5th OF July 2020.

Janelle T. Spearman

NOTARY PUBLIC

JANELLE T. SPEARMAN
Notary Public-State of South Carolina
My Commission Expires
August 26, 2025

My Commission Expires

SALUDA UNIT

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

The State of South Carolina,
Plaintiff,

Vs.

Jamaad D. Thomas,
Defendant.

) IN THE COURT OF GENERAL SESSIONS
) TWELFTH JUDICIAL CIRCUIT

"Rule 5"

) NOTICE OF MOTION AND MOTION FOR
) PRODUCTION AND INSPECTION OF
) EVIDENCE OR INFORMATION WHICH
) MAY LEAD TO EVIDENCE

) Warrant No.: M-378817

2012 JAN 19 PM 3:53
SHEARIN
& G.S.
FLORENCE COUNTY, SC

To: The State of South Carolina, and its attorney:

YOU WILL PLEASE TAKE NOTICE that as counsel for the above-named Defendant, we are requesting, under the authority of Brady vs. Maryland, 373 U.S. 83 (1963); Napue vs. Illinois, 360 U.S. 364 (1959); Alcorta 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), that your office supply to us, or make available for inspection, all evidence which may be favorable to the Defendant with regard to the offense(s) with which he/she has been charged.

The Defendant is requesting access to such favorable information as is in your custody as well as that being held by investigating officers or agencies. Such information would include but would not be confined to the following:

- 1) All written statements of the Defendant, whether signed or unsigned;
- 2) All written statements made by witnesses or any other persons, whether signed or

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And Information Which May Lead to Evidence
Warrant No.: M-378817
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M. J. Spivey
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

unsigned, which relate to this case;

CRIM EVIDENCE

3) All tape recordings made by witnesses or any other persons in connection with this case;

4) Any and all written reports to the State Law Enforcement Division (SLED) Criminalistics Laboratory; Federal Bureau of Investigation Laboratories; City or County Police Department Criminalistics Identifications personnel, concerning an examination made by said laboratories and/or personnel thereof, of any physical, photographic or written evidence concerned with the investigation of this case;

5) Any and all photographs taken of the Defendant;

6) Any and all photographs taken at the scene of the alleged crime and/or the victim, or otherwise relating to this case;

7) Photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and address of the person(s) to whom the photographs were shown;

8) Handwritten notes or memoranda made by police, investigating officers, or psychiatrists or other connected medical and/or mental health examiners, of their conversations with the Defendant;

9) Handwritten notes made by police or their investigating officers of their conversations or interviews with witnesses;

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Maria J. Spivey
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

★ (10) All transcripts made of tape recorded statements made by the accused and by potential prosecution witnesses, as well as any handwritten notes;

11) Names and addresses of all witnesses having knowledge of the offense charged or any other persons who have been interviewed by the Solicitor, his investigators, his staff or the investigating officers, whether subpoenaed or not, in the crime charged;

12) A copy of the crime or incident report, together with copies of all supplemental reports written by officers investigating the crime involved in the above entitled action;

13) Right to inspect and/or copy or photograph all items of any kind and nature seized and removed as a result of any search of the Defendant, of any premises formerly occupied by the Defendant, if any, or any vehicle associated with the alleged crime;

★ (14) Record of arrests and convictions of any and all witnesses known to the Solicitor's Office, in relation to this case;

★ (15) 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 Jury proceedings in connection with this case;

16) Autopsy reports and pathologist's reports to include any and all photographs of the victim; patient records provided to the pathologists; histological reports; toxicological studies; emergency room records, (including notations as to any medications administered as well as resuscitative measures instituted, if any);

★ (17) Any physical or tangible item in the possession of the Solicitor's Office which may have relevance to the guilt or innocence of this Defendant;

18) Photographs of latent fingerprints found at the crime scene, and latent fingerprints discovered and lifted at the scene of the incident, or upon objects alleged to have been used in the crime alleged; and, any written reports of comparisons made;

19) All reports from the State Law Enforcement Division, Sheriff's Office, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprint analysis in connection with this case;

20) Any criminalistics reports or results of tests performed upon items requested in Paragraph 4 above; and

21) The right to inspect and examine any and all video/audio tapes made at the scene of the crime alleged herein and to obtain a copy thereof.

Recognizing that Brady vs. Maryland, supra, and other authorities cited require that only information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court Order provide for an in camera inspection of the items sought to be discovered should you feel that such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of Brady, et al, will occur. Further, it will be requested of the Court that said Order will be a continuing one, providing that in the event any items sought to be discovered herein become available subsequent to the making of the Order pursuant to this motion, said items will be made available to the Defendant's attorney forthwith if discovered during trial, or no later than 12:00 noon on the first day following its acquisition if discovered

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Warrant No.: M-378817
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

before trial. The purpose of said motion is to enable the Defendant herein to properly prepare a defense to the offenses charged and to properly prepare for the examination of any witnesses who may testify in this case. Defendant would show that the failure to produce any of the foregoing evidence or information by the law enforcement agency involved would result in a violation of the Fifth, Sixth and Fourteenth Amendments of the Federal Constitution of the United States.

January 19, 2012

Florence, South Carolina



JOSHUA A. BAILEY
Attorney for the Defendant

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CERTIFIED: A TRUE COPY
Wanda Bell
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PP-05 - Don't Send A Statement

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT
WARRANT NO(S): M-378817

The State,)
)
 vs.)
)
 JAMAAD D. THOMAS,)
)
 Defendant (s).)
_____)

RULE 5 DISCLOSURE

TO: JOSHUA BAILEY, ATTORNEY FOR THE DEFENDANT:
RE: REQUEST FOR DISCLOSURE UNDER RULE 5 FOR THE ABOVE CAPTIONED
DEFENDANT:

In response to your request for disclosure under Rule 5, for the above referenced defendant, the State provides for the defendant a copy of the following:


1. Copy of Warrants M-378817.
2. Copy of booking photo.
3. Copy of prior criminal history.
4. Copy of FPD Incident Report, case# 2011-009262 (2 pages).
5. Copy of FPD Witness Information sheets (8).
6. Copy of FPD incident Report Supplemental of T. Carraway (7 pages).
7. Copy of FPD incident Report Supplemental of C. Moreau (2 pages).
8. Copy of FPD incident Report Supplemental of M. Brandt.
9. Copy of FPD incident Report Supplemental of D. Williamson.
10. Copy of FPD incident Report Supplemental of N. Poston.
11. Copy of FPD incident Report Supplemental of H. Wynn.
12. Copy of FPD Crime Scene Unit Case Data Sheet, dated 09-18-11.
13. Copy of FPD Crime Scene Entrance Log (2 pages).
14. Copy of FPD Waiver of Rights Form dated 09-26-11 and signed by Mildenzel Davis.

15. Copy of FPD Waiver of Rights Form dated 11-03-11 and signed by Calvin Hunter.
16. Copy of FPD Waiver of Rights Form dated 12-05-11 and signed by Jamaad Thomas.
17. Copy of FPD Polygraph Report dated 09-27-11 for Byron Black.
18. Copy of FPD Polygraph Report dated 09-27-11 for Mildenzel Davis.
19. Copy of FPD Polygraph Report dated 09-28-11 for Mildenzel Davis.
20. Copy of FPD Polygraph Report dated 10-06-11 for Jamaad Thomas.
21. Copy of FPD Consent Form dated 09-18-11 and signed by G. Martin.
22. Copy of EMS run summary for victim, Jesse Brower (3 pages).
23. Copy of Coroner Scene Investigation Report.
24. Copy of MUSC Forensic Autopsy Final Report for victim, Jessie Brower (8 pages).
25. Copy of MUSC Evidence Transfer Sheet.
26. Copy of FPD Evidence/Inventory Impound Forms (5 pages).
27. Copy of SLED Forensic Services Request, Lab# L11-11108, Submission #1 (2 pages).
28. Copy of SLED Forensic Services Request, Lab# L11-11108, Submission #2 (2 pages).
29. Copy of SLED Forensic Services Laboratory Report, Lab# L11-11108, Firearms Department, dated 10-31-11.
30. Copy of SLED Forensic Services Laboratory Report, Lab# L11-11108, Toxicology Department, dated 11-01-11.
31. Copy of Death Certificate of victim Jesse Brower.
32. Copy of NCIC Wanted Person File Entry Form for Jamaad D. Thomas (2 pages).
33. Copy of Notification of Removal of Record from SLED.NCIC for Jamaad D. Thomas.
34. Copy of FPD Digital File Transfer Request dated 10-26-11.
35. Copy of FPD Digital File Transfer Request dated 10-07-11.
36. Copy of SC DMV 3-year Driver Record for Mildenzel Davis (2 pages).
37. Copy of Booking Information #2011-00006865 of Mildenzel Davis.
38. Copy of SC DMV 3-year Driver Record for Jamaad Thomas.
39. Copy of Booking Information #2011-00001620 of Jamaad Thomas (2 pages).
40. Copy of FCDC Booking Card for Jamaad Thomas.
41. Copy of CD-R disc containing Interviews: D. Miller, H. Shields, B. Black, M. Davis, M. Dixon, D. Johnson, C. Faison, R. Titus?

42. Copy of DVD-R disc containing scene photos, hospital photos, autopsy photos, lab photos, and statements of: T. Francis, A. Titus, D. Hudson, C. Flynn, G. Martin.
43. Copy of DVD-R disc containing video statement of J. Thomas.

Any additional photos, documents and/or tangible objects, which could be admitted into evidence, are available for inspection by appointment upon your request.

Having complied with the defendant's request, The State hereby requests the information subject to disclosure under Rule 5(b)(1)(A)(B).



E.L. CLEMENTS, III
SOLICITOR
TWELFTH JUDICIAL CIRCUIT

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Florence, South Carolina

January 20, 2012

JAMMAD D Thomas #354532
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC, 29210

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