

JAN JAGEL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE CARMEN T. MULLEN, CIRCUIT COURT JUDGE
APPELLATE CASE NO: 2020-000110

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SC Court of Appeals

NATHANIEL JOHNSON, JR. #211574,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

INITIAL BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON APPEAL

1. DID THE CIRCUIT COURT ERR IN HOLDING THAT THE PETITIONER IS NOT ENTITLED TO FORENSIC DNA TESTING WHEN HIS TRIAL COUNSEL FAILED TO CHALLENGE THE CHAIN OF CUSTODY OR THE AUTHENTICITY OF THE ORIGINAL FORENSIC DNA EVIDENCE USED TO CONVICT?

2. DID THE CIRCUIT COURT VIOLATE THE FEDERAL RIGHTS OF THE PETITIONER WHEN IT DENIED THE PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS GUARANTEED UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

3. DID THE CIRCUIT COURT ABUSE ITS DISCRETION WHEN IT FAILED TO PROMPTLY ACT, OR FAILED TO EXERCISE ITS DISCRETION REASONABLY, WITHOUT ARBITRARY, OR AN UNFAIR DECISION MAKING PROCESS?

4. WHETHER THE CIRCUIT COURT'S FINDING OR FACT AND CONCLUSION OF LAW COMPLIED WITH THE ACCESS TO JUSTICE POST-CONVICTION FORENSIC DNA TESTING ACT, IN §17-28-30(a) OR §17-28-90(b)(2)?

5. DID THE CIRCUIT COURT DEPRIVED THE PETITIONER OF HIS FEDERAL RIGHTS ACCORDING TO THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURES RULE#6, AND THE RIGHTS GUARANTEED UNDER THE SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSE?

6. WHETHER THE LOWER COURT VIOLATED THE FEDERAL RIGHTS OF THE PETITIONER WHEN IT CONVICTED THE PETITIONER TWICE FOR THE SAME OFFENSE AGAINST THE PROHIBITION OF THE FIFTH AMENDMENT DOUBLE JEOPARDY CLAUSE AND THE SELF-INCRIMINATION?

STATEMENT OF CASE

ON APRIL 22nd, 2016, PETITIONER FILED WITH THE COURT OF GENERAL SESSIONS IN BEAUFORT COUNTY, AN FORENSIC DNA TESTING APPLICATION, AND A POST-CONVICTION RELIEF APPLICATION WITH THE COURT OF COMMON PLEAS. THE PCR APPLICATION WAS GIVEN THE DOCKET #2016-CP-07-00979, AND THE FORENSIC DNA APPLICATION UNDER THE ORIGINAL INDICTMENT'S#2006-GS-07-01640, & 01641. WHILE THE CASES WERE PENDING THE PETITIONER FILED SEVERAL OTHER MOTIONS. A MOTION TO SUPPRESS THE ILLEGALLY OBTAINED DNA SAMPLES TAKEN BY FORCE FROM THE PETITIONER, MOTION FOR JUDGMENT BY DEFAULT, MOTION FOR AN ORDER TO TERMINATE THE SEXUAL REGISTRY. AS OF THIS DATE NONE WHICH HAVE BEEN RULED UPON. PETITIONER FILED AN PETITION FOR WRIT OF MANDAMUS WITH THE S.C. COURT OF APPEALS, ON MARCH 3rd,2018, ASSIGN APPELLATE CASE NO:#2018-000545, AND THE CASE WAS TRANSFERRED TO THE S.C. SUPREME COURT ON MARCH 23rd,2018. THE STATE WAS ORDERED TO MAKE ITS RETURN. THE PETITIONER RECEIVED AN COPY OF THE STATE'S RETURN ON APRIL 26th,2018. PETITIONER FILED HIS REPLY IN OPPOSITION TO THE STATE'S RETURN ALONG WITH AN MOTION FOR AN ORDER TO COMPEL DISCOVERY AND DISCLOSURE OF THE DNA EVIDENCE. PETITIONER RECEIVED AN ORDER FROM THE S.C. SUPREME COURT DECLINING TO ISSUE THE WRIT OF MANDAMUS ON MAY 5th,2018. ON SEPTEMBER 10th,2018, PETITIONER RECEIVED A LETTER FROM THE HONORABLE CARMEN T. MULLEN, JUDGE, MAKING HIM AWARE OF AN COURT APPEARANCE FOR AN FORENSIC DNA TESTING HEARING. THE HEARING WAS CANCELED DUE TO BAD WEATHER. ON NOVEMBER 15th,2018, THE PETITIONER WAS TRANSPORTED TO THE BEAUFORT COUNTY COURTHOUSE FOR AN FORENSIC DNA TESTING HEARING WITHOUT NOTICE. AFTER, THE HEARING THE PETITIONER CONTACTED THE COURT REPORTER IN REFERENCE TO OBTAINING A TRANSCRIPT. PETITIONER CONTACTED THE S.C. COMMISSION ON INDIGENT DEFENSE DEPUTY W. LAWRENCE BROWN REQUESTING FUNDING TO PROVIDE FOR THE TRANSCRIPT. PETITIONER WAS ADVISED THAT HE NEEDED AN ORDER FROM THE COURT AUTHORIZING THE APPROVAL TO PAY FOR THE TRANSCRIPT. PETITIONER RECEIVED AN COURT ORDER SIGNED BY THE HONORABLE CARMEN T. MULLEN, ON JANUARY 2020, THAT ON OCT 14TH,2019, DNA TESTING IS DENIED, BUT FAILED TO SERVE AN COPY OF THE ORDER. ON JANUARY 2020, PETITIONER FILED WITH THE SOUTH CAROLINA COURT OF APPEALS, HIS NOTICE OF AN BELATED APPEAL, AS FOLLOWED:

HARRIS

ARGUMENT

1. THE COURT DID ERR WHEN IT DENIED THE PETITIONER HIS FEDERAL CONSTITUTIONAL RIGHTS GUARANTEED UNDER THE DUE PROCESS CLAUSE.

DISCUSSION

PETITIONER ARGUES THAT HE IS ENTITLED TO CHALLENGE THE AUTHENTICITY OF THE DNA EVIDENCE USED AGAINST HIM. HE ALSO ASSERTS THAT HE IS CONSTITUTIONALLY ENTITLED TO CHALLENGE THE CHAIN OF CUSTODY IN REGARDS TO THE ANALYSIS OF SCIENTIFIC FORENSIC DNA TESTING USED TO CONVICT. ACCORDING TO THE ACCESS TO JUSTICE POST-CONVICTION DNA TESTING ACT, §17-28-30(a), STATES IN PART ANYONE INCARCERATED FOR ANY OF THE OFFENSES LISTED IN SUBSECTION (a) MAY APPLY TO HAVE HIS/HER DNA PHYSICAL EVIDENCE OR BIOLOGICAL MATERIAL TESTED AND THERE IS NO STATUTE OF LIMITATIONS.

PETITIONER ASSERTS THAT HE WAS DEPRIVED OF HIS SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. HE ARGUES THAT HE WAS DENIED A CONFRONTATIONAL CLAUSE WITHIN THE MEANING OF EVER OBTAINING A PRELIMINARY HEARING WHEN THE PETITIONER SPECIFICALLY REQUESTED TO BE PRESENT AT THE HEARING. DENIED EFFECTIVE ASSISTANCE OF COUNSEL, THE RIGHT TO RECEIVE A FAIR JURY TRIAL. TRIAL COUNSEL STEPHANIE SMART-GITTINGS, FAILED TO CHALLENGE THE AUTHENTICITY OF THE FORENSIC DNA EVIDENCE OR THE CHAIN OF CUSTODY. PETITIONER HAS AN OBLIGATION AND A DUTY TO CHALLENGE THIS UNLAWFUL CONVICTIONS THROUGH SCIENTIFIC FORENSIC DNA TESTING. PLEASE OBSERVE THE PCR TRANSCRIPT p.398 line 25 DIRECT BY TIMOTHY WOGAN- STEPHANIE SMART-GITTINGS, WAS THERE A PRELIMINARY HEARING? p.407, line 6 DID YOU OBTAIN THE HARD COPIES OF THE ELECTROPHEROGRAMS? lines 17-20, COUNSEL ADMITS TO ABANDONING THE DNA EVIDENCE DEFENSE. p.418 lines 18-21 DO YOU THINK THAT YOUR CLIENT HAD A PROPER CHAIN OF CUSTODY? line 23 DID YOU CONSIDER THE DNA EVIDENCE SO UNIMPORTANT IN THIS CASE THAT YOU WOULD NOT STIPULATE TO A CHAIN OF CUSTODY? p.420 line 5-8 COUNSEL STATES HER REASON FOR NOT CHALLENGING THE DNA EVIDENCE OR THE CHAIN OF CUSTODY. p.421 line 1 DO YOU BELIEVE THAT YOU HAD AN OBLIGATION TO CHALLENGE THE CHAIN OF CUSTODY OR THE FORENSIC DNA EVIDENCE? p.426 lines 8-12 COUNSEL DID YOU PARTICIPATE IN THE SCMERBER HEARING AND THE ORDER OF AN BLOOD SAMPLE FROM YOUR CLIENT? COUNSEL PERJURED HER STATEMENTS STATING THAT SHE HAD NO INVOLVEMENT WITH THE SCMERBER HEARING.

PETITIONER FURTHER ARGUES THAT HIS RIGHTS WERE VIOLATED UNDER THE S.C. CONST. ART 1 § 3 EQUAL PROTECTION, §10 WARRANTLESS SEARCH AND SEIZURE, U.S. CONST. AMEND IV. UNREASONABLE SEARCH AND SEIZURE, EQUAL PROTECTION, DUE PROCESS CLAUSE. CITING THE FOLLOWING CASES: * KIMMELMAN V. MORRISON, 477 U.S. 365, 385 (1986) COUNSEL'S FAILURE TO CONDUCT ANY PRE-TRIAL DISCOVERIES AND THE FAILURE TO TIMELY FILE AN SUPPRESSION MOTION WAS PREJUDICIAL AND HER PERFORMANCE WAS BELOW PREVAILING PROFESSIONAL NORMS.* JOHNSON V. U.S., 604 F.3d 1016, 1019-22 (7TH CIR. 2010), COUNSEL'S FAILURE TO MOVE TO SUPPRESS THE ILLEGALLY OBTAINED DNA EVIDENCE THAT WAS TAKEN FROM HER CLIENT WAS DEFICIENT PERFORMANCE AND INEFFECTIVE ASSISTANCE BECAUSE REASONABLE PROBABILITY THAT THE SUPPRESSION WOULD HAVE RESULTED IN A DIFFERENT OUTCOME.

* ELMORE V. OZMINT, 661 F.3d 783, 866 (4TH CIR. 2011) COUNSEL'S FAILURE TO PROPERLY INVESTIGATE THE FORENSIC DNA EVIDENCE WAS UNREASONABLE BECAUSE OFFICER BRIAN CHAPMAN OF THE (BCSO) BEAUFORT COUNTY SHERIFF'S OFFICE, CLEARLY VIOLATED THE PETITIONER'S FOURTH AMENDMENT RIGHTS TO BE PROTECTED AGAINST ANY INVASION OF PRIVACY OR UNREASONABLE SEARCHES AND SEIZURES. THE OVERRIDING FUNCTION OF THE FOURTH AMENDMENT IS TO PROTECT PERSONAL PRIVACY AND DIGNITY AGAINST UNWARRANTED INTRUSION BY THE STATE. SEE * MAPP V. OHIO, 386 U.S. 532, 548 (1897) WHERE THE EXCLUSIONARY RULE APPLIES IN STATE COURT FOR EVIDENCE OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT. THE PETITIONER FULFILLED HIS OBLIGATION WHEN HE MOVED WITH HIS MOTION TO SUPPRESS THE ILLEGALLY OBTAINED EVIDENCE, AND THE COURT FAILED TO MAKE A RULING UPON THAT MOTION OR TO CONDUCT AN EVIDENTIARY HEARING. SEE * GENTRY V. SEVIER, 597 F.3d 838, 851-52 (7TH CIR. 2010), COUNSEL'S FAILURE TO OBJECT TO SUPPRESSIBLE EVIDENCE WAS UNREASONABLE BECAUSE THE OFFICER OBTAINED THE ORDER FOR AN SCHMERBER HEARING FROM THE SENTENCING JUDGE HOWARD P. KING, BEFORE THE DATE OF THE TRIAL IN "BAD FAITH". SEE * SATTERWHITE V. TEXAS, 486 U.S. 249, 256 (1988), THE COURT HAS UNIFORMLY FOUND CONSTITUTIONAL ERRORS WITHOUT ANY SHOWING OF PREJUDICE WHEN COUNSEL WAS EITHER TOTALLY ABSENT, OR PREVENTED FOR ASSISTING THE ACCUSED DURING A CRITICAL STAGE OF THE PROCEEDINGS. ALSO SEE * EVITT V. LUCEY, 469 U.S. 387, 396 (1985) DUE PROCESS REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL DURING FIRST APPEAL AS OF RIGHT.

SEE * BLACKBURN V. ALABAMA, 361 U.S. 199, 205 (1960), THE EXCLUSIONARY RULE APPLIES TO STATE COURT EVIDENCE OBTAINED IN VIOLATION OF THE FIFTH AMENDMENT. TO COMPEL A PERSON TO SUBMIT TO TESTING IN WHICH AN EFFORT WILL BE MADE TO DETERMINE GUILT OR INNOCENCE.

PETITIONER'S RIGHTS WERE VIOLATED WHILE BEING FORCED TO GIVE UP AN BLOOD SAMPLE WHEN IT LACKED SUBJECT MATTER JURISDICTION. SEE * STATE V. EASTERLING, 257 S.C. 239, 185, S.Ed.2d. 366 (S.C. 1971), * STATE V. CARTER, 344 S.C. 419, 424, 544 S.Ed.2d 835 (2001), * STATE V. FORD, 301 S.C. 485, 392 S.Ed.2d 781 (1990), * STATE V. JENKINS, 398 S.C. 215, 727 S.Ed.2d 761 (Ct. App 2012), AND * STATE V. PATTERSON, 425 S.C. 500, 823 S.Ed.2d 217 (Ct. App 2019).

PETITIONER ARGUES THAT ANY PROSECUTION WITHOUT INDICTMENT ISSUED BY AN GRAND JURY IS A VIOLATION TO THE STATE'S CONSTITUTION ART#1 §11 PRESENTMENT TO AN GRAND JURY FOR INDICTMENT, AND AGAINST MANDATORY SUBJECT MATTER JURISDICTIONAL PREREQUISITE FOR ALL FELONY PROSECUTIONS. THESE TYPES OF FELONIES ARE VOID AB-INITIO. SEE * U.S. V. COTTON, 535 U.S. 625, 630 (2002),

2. THE CIRCUIT COURT DID VIOLATE THE PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS BOTH PROCEDURALLY AND SUBSTANTIVELY, VIOLATING THE DUE PROCESS CLAUSE AND THE EQUAL PROTECTION CLAUSE.

DISCUSSION

PETITIONER ASSERTS THAT HE WAS DENIED THE RIGHTS OF HIS CONFRONTATIONAL CLAUSE, BY DEPRIVING HIM OF HIS RIGHTS TO AN PRELIMINARY HEARING. PETITIONER FILED AN PRE-TRIAL MOTION TO DISMISS BASED UPON THE CRIMINAL RULES AND PROCEDURES. THE CIRCUIT COURT RULED IN ERR, HOLDING THAT THE PETITIONER WAS NOT CONSTITUTIONALLY ENTITLED TO AN PRELIMINARY HEARING BECAUSE HE WAS ALREADY INDICTED. PETITIONER ASKS THAT YOU PLEASE EXAMINED HIS EXHIBITS#Y AND THE CORRESPONDENCE FROM THE MAGISTRATES CLERK STATING THAT ON SEPTEMBER 15TH, 2006, A PRELIMINARY HEARING WAS CONDUCTED, AND THE ORDER DENYING THE MOTION TO DISMISS. PETITIONER ALLEGES THAT THE APPELLATE COUNSEL MISREPRESENTED THE FACTS OF THE PETITIONER'S CASE DURING HIS ORIGINAL APPEALS PROCESS. IN THE CASE OF * EVITT V. LUCEY, 469 U.S. 387, 396 (1985), PETITIONER ASSERTS THAT HE IS CONSTITUTIONALLY ENTITLED TO EFFECTIVE ASSISTANCE ON HIS FIRST APPEAL AS OF RIGHT. PETITIONER ASSERTS BEING DEPRIVED OF HIS FEDERAL RIGHTS UNDER THE S.C. CONST. ART.#1 §3, §10, §11, §12, & §14, AND THE U.S. CONST. VI. & XIV. §1,

THE FEDERAL GOVERNMENT HAS PASSED THE INNOCENCE PROTECTION ACT., OF 2004 §413 118 STAT. 2285 42 U.S.C. §14136. PETITIONER IS CONSTITUTIONALLY ENTITLED TO THE DNA EVIDENCE UNDER 18 U.S.C. §3600(a). SEE * GRISWOLD V. CONNECTICUT, 381 U.S. 479, 85 S.Ct. 1678 14 LED. ALSO SEE * COUNSELMAN V. HITCHCOCK, 142 U.S. 547, 562, 12 S.Ct. 195, 198.

FOURTEENTH AMENDMENT §1, NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW, NOR SHALL IT DENY ANY PERSONS EQUAL PROTECTION OF THE LAW. PETITIONER HAS A PROTECTED LIBERTY INTEREST, AND HE IS CONSTITUTIONALLY ENTITLED TO HAVING THE STATE DISCLOSE THE FORENSIC DNA EVIDENCE AT HIS REQUEST. PETITIONER FURTHER ARGUES THAT THE ACCESS TO JUSTICE AND THE DISCLOSURE OF THE STATE'S DNA EVIDENCE IS A "PROCESS", NEEDED TO VINDICATE HIS RIGHT TO PROVE HIMSELF INNOCENT AND GET OUT OF PRISON. THE STATE HAS AN OBLIGATION TO COMPLY WITH THE PRINCIPLES OF * BRADY V. MARYLAND, 373 U.S. 83 (1963). PETITIONER IS CONSTITUTIONALLY ENTITLED TO FUNDAMENTAL FAIRNESS. PETITIONER ASSERTS THAT HE WAS DENIED A FAIR TRIAL BY WAY OF AN SHAM LEGAL PROCESS. PETITIONER ALLEGES BEING DENIED EFFECTIVE ASSISTANCE THROUGH HIS TRIAL COUNSEL STEPHANIE SMART-GITTINGS AND THROUGH HIS APPELLATE LANELLE DURANT. PETITIONER'S FIRST APPEAL HIS APPELLATE COUNSEL PAINTED AN PICTURE TO THE S.C. COURT OF APPEALS, STATEMENT OF THE CASE, STATING THAT ON SEPTEMBER 21ST, 2006, THE PETITIONER WAS INDICTED BY THE BEAUFORT COUNTY GRAND JURY. THE PETITIONER RESPECTFULLY OPPOSES THIS STATEMENT AS BEING TRUE. PETITIONER ASSERTS THAT HE WAS SUBSTANTIVELY DEPRIVED BY THE ARBITRARY ACTIONS OF FRAUD BEING PLACED UPON THE COURT. SEE * REGIONS BANK V. SCHMAUCH, 582 S.E.2d. 432, 354 S.C. 648 (S.C. App. 2003), FRAUD IS AN INTENTIONAL PERVERSION OF TRUTH FOR THE PURPOSE OF INDUCING ANOTHER IN RELIANCE UPON IT TO PART OF SOMETHING VALUABLE BELONGING TO HIM/HER TO SURRENDER A LEGAL THING. ALSO, SEE * MENDELSON V. WHITFIELD, 430 S.Ed.2d 574, 312 (S.C. App. 1993), FRAUD CONSISTS OF MAKING FALSE STATEMENTS THAT IS MATERIAL AND IS INTENDED TO AND DOES DECEIVE. THE PROCEDURAL DUE PROCESS PROTECTS THE LIBERTY INTEREST, WHERE AS THE SUBSTANTIVE DUE PROCESS PROTECTS THE RIGHT TO BE FREE FROM ARBITRARY GOVERNMENTAL ACTIONS SUCH AS WITHHOLDING EVIDENCE, TAMPERING WITH, OR FABRICATING DNA EVIDENCE AND MAKING FALSE STATEMENTS. WHERE THE GOVERNMENT HOLDS PREVIOUSLY PRODUCED FORENSIC DNA EVIDENCE, TESTING OF WHICH CONCEDLY COULD PROVE INNOCENCE FOR WHICH THE PETITIONER IS CONVICTED FOR A CRIME THAT HE DID NOT COMMIT, HAS THE VERY SAME ELEMENTAL PRICIPLES OF FUNDAMENTAL FAIRNESS THAT DICTATES PRE-TRIAL PRODUCTION OF ALL POTENTIALLY EXCULPATORY EVIDENCE, ALSO, DICTATES THE SAME IN POST-TRIAL PRODUCTION. PETITIONER HAS FILED AN MOTION FOR AN ORDER TO COMPEL DISCOVERY AND DISCLOSURE OF THE DNA EVIDENCE IN WHICH THE COURT HAS FAILED TO ACKNOWLEDGE OR TO MAKE A RULING. SEE * SOUTH CAROLINA DEPT. OF SOCIAL SERVICES V. LISA C., 380 S.C. 406, 669, S.Ed.2d 647 (Ct. App 2008). IN REGARDS TO FRAUD UPON THE COURT.

3. THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT FAILED TO PROMPTLY ACT, OR FAILED TO EXERCISE ITS DISCRETION REASONABLY WITHOUT ARBITRARY OR UNFAIR DECISION MAKING PROCESS.

DISCUSSION

THE COURT ERRED BECAUSE IT FAILED TO RULE ON SEVERAL MOTIONS PRESENTED BEFORE IT. PETITIONER FILED AN MOTION TO SUPPRESS THE ILLEGALLY OBTAINED DNA EVIDENCE BY WAY OF AN UNREASONABLE SEARCH AND SEIZURE. WHENEVER, EVIDENCE ALLEGEDLY OBTAINED ILLEGALLY BY THE CONDUCT VIOLATIVE OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH AMENDMENT, THE TRIAL COURT MUST CONDUCT AN EVIDENTIARY HEARING TO ESTABLISH THE CIRCUMSTANCES UNDER WHICH IT WAS SEIZED. PETITIONER ASSERTS THAT HE WAS FIRST SEIZED AND A SEARCH TOOK PLACE. THE BODILY INTRUSION WITHOUT CONSENT IS AN CLEAR VIOLATION OF INVASION OF PERSON AND PROPERTY. SEARCHES IMPLIED BY INVASION AND QUEST WITH SOME SORT OF FORCE, ACTUAL OR CONSTRUCTIVE, IS A CLEAR VIOLATION OF THE FOURTH AMENDMENT.

PETITIONER ARGUES THAT HE HAS STANDING. STANDING IS A LEGAL RIGHT THAT A PERSON HAS AND IS ENTITLED TO CHALLENGE THE CRIMINAL PROCEDURES AND METHODS EMPLOYED UNDER FEDERAL CONSTITUTIONAL STANDARDS. ONLY AGGRIEVED PERSONS CAN CHALLENGE THE VIOLATIONS OF HIS FOURTH AMENDMENT. THIS CASE INVOLVES THE FRUITS OF THE POISONOUS TREE ANALYSIS BECAUSE THE PETITIONER WAS THE TARGET OF THE OFFICER'S INVESTIGATION. PETITIONER FILED HIS MOTION TO SUPPRESS THE ILLEGALLY OBTAINED EVIDENCE BECAUSE OF THE FALSE STATEMENTS THAT WERE INCLUDED IN THE WARRANT AFFIDAVIT KNOWINGLY AND INTENTIONALLY OR WITH RECKLESS DISREGARD FOR THE TRUTH IN ORDER TO INJURE ANOTHER IN "BAD FAITH". THE COURT FAILED TO HOLD AN EVIDENTIARY HEARING TO CONSIDER THIS MATTER.

INVASION OF PRIVACY IS PROHIBITED, AND SHALL NOT BE VIOLATIVE. THE SEARCH WAS UNJUSTIFIED AND UNREASONABLE, BECAUSE THE OFFICER WAS ADVISED BY THE FOURTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE IN BEAUFORT COUNTY, THAT THERE IS NOT ENOUGH PROBABLE CAUSE TO KEEP THE DEFENDANT DETAINED OR TO OBTAIN A DNA SAMPLE FROM MR. JOHNSON, THE PETITIONER. CIRCUIT COURT JUDGE ROGER YOUNG, DENIED THE PETITIONER'S MOTION TO DISMISS IN ERR. AUTHORITY OF THE TRIAL JUDGE, HOWARD P. KING, HAD NO AUTHORITY TO GRANT AN ORDER FORCING THE TAKING OF THE PETITIONER'S BLOOD. MANDATORY DISQUALIFICATION OR RECUSAL. DUE PROCESS REQUIRES THAT A JUDGE POSSES NEITHER ACTUAL NOR APPARENT BIAS. IF ACTUAL OR APPARENT JUDICIAL BIAS EXISTS, 28 U.S.C. §144, & §445, PROVIDES A MECHANISM FOR A JUDGE'S RECUSAL. SEE * TUMEY V. OHIO, 273 U.S. 510, 522 (1927).

4. THE CIRCUIT COURT DEPRIVED THE PETITIONER OF HIS FEDERAL CONSTITUTIONAL RIGHTS BY FAILING TO COMPLY WITH THE ACCESS TO JUSTICE POST-CONVICTION DNA TESTING ACT, BY FAILING TO MAKE ITS FINDING OF FACT AND CONCLUSION OF LAW.

DISCUSSION

THE CIRCUIT COURT DEPRIVED THE PETITIONER OF HIS FEDERAL RIGHTS, ACCORDING TO THE S.C. CRIMINAL RULES AND PROCEDURES, RULE#6(d) WAIVER OF RIGHTS, STATES NOTHING IN THIS RULE SHALL PRECLUDE THE PETITIONER FROM INSPECTING, OR HAVING AN CHEMIST OR ANALYSIS TO EXAMINED THE FORENSIC DNA EVIDENCE ON HIS BEHALF.

PETITIONER ALLEGES THAT HE WAS CONSTITUTIONALLY DEPRIVED OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION OF THE LAW VIOLATING THE FOURTEENTH AMENDMENT §1, PROVIDES THAT "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR SHALL IT DENY ANY PERSON EQUAL PROTECTION OF LAW. COURTS HAVE FREQUENTLY RECOGNIZED THAT PROTECTED LIBERTY INTERESTS MAY ARISE "FROM THE CONSTITUTION ITSELF BY REASON OF GUARANTEES IMPLICIT IN THE WORD "LIBERTY", OR IT MAY ARISE FROM AN EXPECTATION OR INTEREST CREATED BY STATE LAWS OR POLICES. PETITIONER CONTENDS THAT HE IS CONSTITUTIONALLY ENTITLED TO ACCESS THE FORENSIC DNA EVIDENCE USED TO CONVICT. CONSTITUTIONALLY ENTITLED TO CHALLENGE THE AUTHENTICITY OF THE SCIENTIFIC FORENSIC DNA EVIDENCE AND THE CHAIN OF CUSTODY. PETITIONER ASSERTS THAT HE HAS A RIGHT TO CHALLENGE THE CREDIBILITY OF THE WITNESSES FORENSIC ANALYST, THE INVESTIGATING OFFICERS CHARACTER FOR TRUTHFULNESS - vs- UNTRUTHFULNESS UNDER THE S.C. RULES OF EVIDENCE RULE 608(b).

THE COURT ERRED BY FAILING TO STATE IT FINDING OF FACT AND CONCLUSION OF LAW. S.C. CODE OF LAW §17-28-50(c). §17-28-90(g), STATES THAT THE APPLICANT OR THE SOLICITOR SHALL HAVE THE RIGHT TO APPEAL A FINAL ORDER DENYING THE APPLICATION. THE COURT FAILED TO ESTABLISH ITS FINDING OF FACT AND CONCLUSION OF LAW, NOR DID IT ADEQUATELY PROVIDE THE APPLICANT WITH AN COPY OF THE ORDER.

BASED UPON THE APPLICANT'S MOTION TO SUPPRESS THE FORENSIC DNA EVIDENCE, THE COURT WAS SUPPOSED TO HOLD AN EVIDENTIARY HEARING OR MAKE A DETERMINATION AS TO WHETHER OR NOT THE EXCULSIONARY RULE, APPLIES TO SUPPRESS THE ILLEGALLY OBTAINED DNA EVIDENCE. SEE * PEOPLE V. HAMMERLUND, 2019 MICH LEXIS 1286 (2019) ALSO, SEE * KIMMELMAN V. MORRISON, 477 U.S. 365, 91 L.Ed.2d 106 S.Ct. 2574 (1986). PETITIONER ASSERTS THAT HE WAS DENIED FUNDAMENTAL FAIRNESS AND EFFECTIVE ASSISTANCE DURING HIS TRIAL IN VIOLATION OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION.

5. THE CIRCUIT COURT DID DEPRIVE THE PETITIONER OF HIS FEDERAL RIGHTS BECAUSE IT DID NOT COMPLY WITH THE S.C. CRIMINAL RULES AND PROCEDURES RULE#6(d) WAIVER OF RIGHTS.

DISCUSSION

PETITIONER ARGUES THAT HE WAS DENIED EQUAL PROTECTION OF THE LAW. RULE#6(d) WAIVER OF RIGHTS, STATES THAT NOTHING IN THIS RULE SHALL PRECLUDE THE RIGHT OF ANY DEFENDANT TO OBTAIN AN EXPERT CHEMIST OR ANALYST TO TEST A SUBSTANCE IN HIS BEHALF, NOR SHALL IT PRECLUDE THE RIGHT OF ANY PARTY TO INTRODUCE ANY EVIDENCE SUPPORTING OR CONTRADICTING REPORTS OR PAPERS ENTERED INTO EVIDENCE UNDER THIS RULE.

THE DNA TESTING REQUEST IS MATERIAL TO THE ISSUE OF IDENTITY OF THE PETITIONER AS THE PERPETRATOR. PETITIONER ASSERTS THAT HE IS CONSTITUTIONALLY ENTITLED TO CHALLENGE THE AUTHENTICITY OF THE FORENSIC SCIENTIFIC DNA EVIDENCE AND THAT IT IS REASONABLY NECESSARY FOR THE PETITIONER TO ESTABLISH OR DEMONSTRATE ACTUAL INNOCENCE. SEE * CHERRI V. BRAXTON, 131 F.d Supp 2d. 756 App (2001 ED VA). FOURTEENTH AMENDMENT § 1 STATES "NO STATE SHALL DEPRIVE ANY PERSONS OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS, NOR SHALL ANY PERSONS BE DENIED EQUAL PROTECTION OF LAW.

THE STATE MISREPRESENTED THE FORENSIC DNA EVIDENCE, MADE FALSE STATEMENTS, AND FABRICATED THE SCIENTIFIC FORENSIC DNA EVIDENCE DURING TRIAL. COUNSEL HAD AN OBLIGATION TO CHALLENGE THE DNA EVIDENCE. AT THE PCR HEARING WHEN ASKED WHY SHE DID NOT CHALLENGE THE DNA EVIDENCE SHE STATED THAT SHE LEFT THIS RESPONSIBILITY TO MR. JOHNSON. SEE * NAPUE V. PEOPLE V. ILLINOIS, 360 U.S. 3, L.Ed.2d 1217, 79 S.Ct. 1173 (1959). ALSO, SEE * EX PARTE BAIN, 121 U.S. 1, 9-10 (1887). SEE * GANIT V. STATE, 354 S.C. 183, 187, 580 S.Ed.2d 133 (2003) §17-13-140, WHERE THE COURT FAILED TO COMPLY WITH THE STATUTE REQUIREMENT OF WARRANT FOR BLOOD SAMPLE.

6. CIRCUIT COURT DID VIOLATE THE FEDERAL RIGHTS OF THE PETITIONER WHEN IT CONVICTED HIM TWICE FOR THE SAME OFFENSE VIOLATING THE DOUBLE JEOPARDY CLAUSE AND SELF-INCRIMINATION PROHIBITION UNDER THE UNITED STATES CONSTITUTION.

DISCUSSION

PETITIONER ARGUES THAT WHENEVER TWO CONVICTIONS THAT ARISES OUT OF THE SAME TRANSACTION IT VIOLATES THE FIFTH AMENDMENT DOUBLE JEOPARDY CLAUSE. CONCURRENT SENTENCES OF MULTIPLE CONVICTIONS ARISING FROM A SINGLE INCIDENT IS A CLEAR VIOLATION OF THE DOUBLE JEOPARDY CLAUSE. IF THERE WERE MULTIPLE OCCASIONS HOWEVER, THE U.S. SUPREME COURT HELD THAT A CONCURRENT SENTENCE DOES NOT AMELIORATE A DOUBLE JEOPARDY VIOLATION. THE SUPREME COURT FURTHER EXPLAINED THAT IT IS THE SECOND CONVICTION, IN AND OF ITSELF IRRESPECTIVE OF SENTENCE THAT IS IMPERMISSIBLE. FOR, THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE HAS THE SAME ELEMENTS OF KIDNAPPING WITHIN ITS STATUTE. THIS VIOLATES THE U.S. CONST. AMEND 5, AND S.C. CONST. ART 1 §12.

PETITIONER FURTHER ARGUES THE PROHIBITION OF SELF-INCRIMINATION VIOLATING THE U.S. CONST. AMEND 5, AND S.C. CONST. ART 1 §12, §19-11-50. SELF-INCRIMINATION IS ALLEGED BECAUSE THE PETITIONER WAS FORCED BY THE STATE, TO SURRENDER WITH THE USE OF COMPLUSION. SEE * LEFKOWITZ V. CUNNINGHAM, 413 U.S. 801 (1977), (COMPLUSION NO MATTER HOW SLIGHT IS PROHIBITION UNDER THE U.S. CONST. AMEND 5 AND THE S.C. CONST. ART 1 §12, §19-11-50. ALSO, SEE * EX PARTE DAWSON, 675 SO. 2d. 905 (ALA 1996) IN REGARDS TO THE DOUBLE JEOPARDY CLAUSE VIOLATION.

PETITIONER FURTHER ARGUES THAT THE STATE PROSECUTOR MISREPRESENTED THE FORENSIC PHYSICAL EVIDENCE OR THE BIOLOGICAL MATERIAL DURING TRIAL. SEE * MILLER V. PATE, 386 U.S. 2, 17, L.Ed.2d 690, 87 S.Ct. 785. DURING TRIAL, THE PROSECUTOR AND THE BEAUFORT COUNTY SHERRIFF'S OFFICER BRIAN CHAPMAN, KNOWINGLY MISREPRESENTED THE FITTED SHEET AND THE SCIENTIFIC FORENSIC DNA EVIDENCE OF THE RAPE KIT. THEY MADE FALSE STATEMENTS, FABRICATED THE DNA EVIDENCE AND TESTIFY UNDER OATH IN BAD FAITH THAT THE PETITIONER'S SEMEN WAS DISCOVERED IN THE RAPE KIT. THIS FRAUDULENT CONVICTION WAS OBTAINED BY THE FRUITS OF THE POISONOUS TREE. PETITIONER ALLEGES PROSECUTORIAL MISCONDUCT. WAPUE V. PEOPLE V. ILLINOIS, 360 U.S. 3, L.Ed.2d 1217, 79 S.Ct. 1173 (1959), AND * MOONEY V. HOLOHAN, @(\$ U.S. 103, 55 S.Ct. 340 [omitted).

PETITIONER ALLEGES THE CONVICTIONS OF CSC 1st, AND KIDNAPPING THROUGH THE USE OF FALSE EVIDENCE AND STATEMENTS VIOLATING HIS FOURTEENTH AMENDMENT.

CONCLUSION

WHEREFORE, THE PETITIONER, NATHANIEL JOHNSON, JR. #211574, PRAYS THAT THIS HONORABLE COURT GRANTS HIS PETITION FOR WRIT OF CERTIORARI AND ORDER THIS CASE TO BE REMANDED AND REVERSED FOR THE APPROPRIATE RULINGS ON STATED MOTIONS FINDING OF FACT AND CONCLUSION OF LAW AS JUSTICE IS SO REQUIRED AS A MATTER OF LAW, AND ANY OTHER RELIEF THAT MAY BE DEEMED APPROPRIATE.

DATED: Thurs. Oct. 22nd, 2020.

RESPECTFULLY SUBMITTED,

/s/ Mr. Nathaniel Johnson Jr. #211574
MR. NATHANIEL JOHNSON, JR. #211574

ACT. BAMBERG UNIT F-4 B#26

P.O. BOX 1151

FAIRFAX, S.C. 29827

ATTORNEY FOR THE PETITIONER.

PRO-SE

JAM JABL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE CARMEN T. MULLEN, CIRCUIT COURT JUDGE

APPELLATE CASE NO:2020-000110

RECEIVED
OCT 27 2020
SC Court of Appeals

NATHANIEL JOHNSON, JR. #211574,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

THE UNDERSIGNED COUNSEL HEREBY CERTIFIES THAT A TRUE COPY OF THE INITIAL BRIEF OF THE PETITIONER IN THE ABOVE REFERENCE MATTER HAS BEEN SERVED UPON THE FOLLOWING OPPOSING PARTIES: WILLIAM M. BLITCH, JR. ESQ. ASSISTANT ATTORNEY GENERAL, ATTORNEY GENERAL'S OFFICE, 11549, COLUMBIA, S.C. 29211, AND ISAAC MCDUFFIE STONE, III. P.O. BOX 1880, BLUFFTON, S.C. 29910.

DATED: Thurs. Oct. 22nd, 2020.

RESPECTFULLY SUBMITTED,

[Signature] #211574
/s/ MR. NATHANIEL JOHNSON, JR. #211574

ACI. BAMBERG UNIT F-4 B#26
P.O. BOX 1151
FAIRFAX, S.C. 29827
ATTORNEY FOR PETITIONER PRO-SE

SUBSCRIBED, SWORN AND AFFIRMED BEFORE ME

THIS 21st DAY OF October, 2020.

Debbie Phillips (L.S.)
NOTARY PUBLIC

MY COMMISSION EXPIRES: 7-10-2024.

DATED: THURS. OCT. 22ND, 2020.

THE SOUTH CAROLINA COURT OF APPEALS
THE HONORABLE JENNY A. KITCHINGS, CLERK
P.O. BOX 11629
COLUMBIA, S.C. 29211

RECEIVED
OCT 27 2020
SC Court of Appeals

RE: TO FILE PETITIONER'S INITIAL BRIEF IN COMPLIANCE WITH THE SCACR 247(H).
NATHANIEL JOHNSON, JR. #211574, v. STATE OF SOUTH CAROLINA
APPELLATE CASE NO: 2020-000110

DEAR MRS. KITCHINGS:

ENCLOSED YOU WILL FIND THE ORIGINAL AND ONE COPY OF THE PETITIONER'S INITIAL BRIEF. PLEASE FILE WITH THE COURT AND SEND BACK ONE DATE STAMPED COPY BACK SO THAT I MAY BE ABLE TO MAKE THE ADDITIONAL COPIES NEEDED IN COMPLIANCE WITH THE RULE FOR THE FINAL BRIEF. THE INSTITUTION WILL ONLY MAKE COPIES IF LEGAL MATERIALS ARE DATE STAMPED FOR THE COURTS. PLEASE SEND BACK AT YOUR EARLIEST CONVENIENCE.

DATED: Thurs. Oct 22nd, 2020

RESPECTFULLY SUBMITTED,

1s/ Mr. Nathaniel Johnson, Jr. #211574
MR. NATHANIEL JOHNSON, JR. #211574

ACT. BAMBERG UNIT F-4 B#26

P.O. BOX 1151

FAIRFAX, S.C. 29827

ATTORNEY FOR PETITIONER PRO-SE

CC:

WILLIAM M. BLITCH, JR. ESQ.
ASSISTANT ATTORNEY GENERAL

Dated: Thurs. Oct 22nd, 2020

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC. 29211

RECEIVED

OCT 27 2020

SC Court of Appeals

RE: To file Petitioner's Initial Brief
Nathaniel Johnson Jr. #211574 - vs - State of South Carolina
Appellate Case No: 2020-000110

Dear Mrs Kitchings:

Enclosed you find the original and one copy of
the Petitioner's Initial Brief to be filed with the
Courts. Please send back an date stamped copy
for my records. I have yet to hear from the
Court Reporter on the South Carolina Court Administration
in regards to the obtaining of the transcript.

Sincerely,
/s/ Mr. Nathaniel Johnson Jr.
Mr. Nathaniel Johnson Jr. #211574
A.C.I. Bamberg Unit F-4 B#26
P.O. Box 1151
Fairfax, SC. 29827

Mr Nathaniel L Johnson Jr #211574

ACI. Bamberg Unit F-4 B#26

PO. Box 1151

Fairfax, SC. 29827

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OCT 27 2020
SC Court of Appeals

The South Carolina Court of Appeals
The Honorable Jenny A. Kitchings, Clerk

PO. Box 11626

- Columbia, SC. 29211

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