

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
)
COUNTY OF BEAUFORT) CASE NO.: 2006-GS-07-01640, 1641

NATHANIEL JOHNSON, JR., #211574)
)
PETITIONER,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)

TRANSCRIPT OF RECORD

RECEIVED

NOV 19 2020

SC Court of Appeals

NOVEMBER 15TH, 2018
COMMENCING AT
BEAUFORT COUNTY COURTHOUSE
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

ASST. SOL. MARY JORDAN LEMPESIS, ESQUIRE
FOURTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
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Rebecca H. Hill
Official Court Reporter

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EXHIBITS

NONE.

1 THE COURT: Call your next case, Solicitor.

2 ASST. SOL. LEMPESIS: This is 2006-GS-07-1641 and this
3 is Mr. Johnson's -- if I can read this for a minute. He has
4 an application for post-conviction DNA testing, Your Honor.
5 His application was sent some time ago and the State
6 responded to that application in 2016.

7 THE COURT: Okay.

8 ASST. SOL. LEMPESIS: Your Honor, we are now before the
9 Court, I guess on that application for DNA testing.

10 THE COURT: Okay.

11 ASST. SOL. LEMPESIS: Do you have a copy of the State's
12 response?

13 THE COURT: I do. I have a copy of the State's
14 response. I have his original request. Solicitor, remind
15 me in his trial, in his original case, that was tried by
16 Howard King. My understanding was that there was DNA in
17 that case and it was tested and used; is that correct?

18 ASST. SOL. LEMPESIS: Yes, Your Honor. If you would
19 like, I can go through the facts that were laid out and the
20 State's response. Would you like for me to go back through
21 them real quickly?

22 THE COURT: Yes. Sure.

23 ASST. SOL. LEMPESIS: It was on February 6th of 2006 at
24 about 11:00 in the morning, Mr. Johnson did go into the
25 victim, Ms. Anna Rodriguez's home located on St. Helena

1 Island. He went in asking to use the telephone. She let
2 him in because she thought he was part of the road crew who
3 were working in the road outside. When she let him inside,
4 he pulled out a gun and pointed it at her. Once inside of
5 her bedroom, he ordered her to take off her clothes. He
6 threatened to shoot her if she didn't comply. He then
7 sexually assaulted her several times. After the assault, he
8 took \$400 dollars from her and then left the house. She
9 immediately notified nearby people who called law
10 enforcement. A rape kit was done, Your Honor, and that was
11 the DNA profile. They were submitted for forensic testing
12 and it revealed that Mr. Johnson's DNA profile was a match
13 to the semen collected from that rape kit and the fingernail
14 scrapings from the victim's hands and the fight from the
15 victim's hand that was collected during the assault. A
16 standard was taken for comparison and those findings were
17 admitted during the trial of Mr. Johnson. He was
18 represented by Stephanie Smart-Gittings during that trial
19 and he was convicted of criminal sexual conduct, first
20 degree, and kidnapping in March of 2007.

21 THE COURT: Just so I'm clear in reading this, my
22 understanding was that they first developed or got his DNA
23 off of some eating utensils and a napkin he had used, and
24 then following that, some of it they had, they matched, and
25 then went back and asked for a swab; is that correct?

1 ASST. SOL. LEMPESIS: That's correct, Your Honor.

2 THE COURT: And all of those matched, is that correct?

3 ASST. SOL. LEMPESIS: That is correct, Your Honor.

4 THE COURT: And tell me is there anything that has
5 developed since DNA analysis since 2006 when this was
6 originally done until now that would make any kind of
7 significant difference?

8 ASST. SOL. LEMPESIS: Not that the State is aware of.

9 THE COURT: All right. Sir, good afternoon, and again
10 I apologize for taking so long to get you here. We had this
11 scheduled a couple of times and we had a couple of storms.
12 Sir, what you need to do is explain to me what this new
13 physical evidence would be or what this would help you and
14 how it would in some way exonerate you. It looks like back
15 then we actually did have not one, but two samples that were
16 used that were compared to you and found to be your DNA. So
17 what is the new one going to do for us?

18 MR. JOHNSON: Yes, Your Honor. I would like to be
19 informed about all of the parties that are present here
20 today and the opposing party, like the solicitor, I'm not
21 familiar with her name.

22 THE COURT: This is Mary Jordan Lempesis. She is
23 bringing this on behalf of the State. She is the Chief
24 Solicitor for Beaufort County and handles the administration
25 for it. I don't know that there is anyone else involved in

1 this case in any way. I think that it's just an older case.
2 The rest of the people here, we are handling criminal court
3 as you know. I don't think there is anyone else here that
4 would have anything to do with this case.

5 MR. JOHNSON: How about the court reporter, for
6 purposes of transcript?

7 THE COURT: I'm sorry. Becky, do you have a card?

8 COURT REPORTER: I do.

9 THE COURT: So if you want to request a transcript, you
10 are certainly welcome to do that, sir. Absolutely.

11 MR. JOHNSON: The purpose of me requesting DNA testing
12 is to prove my innocence. There were evidence submitted to
13 SLED that it was undetermined -- that it was an unknown male
14 profile. This was done in August of 2006, but this was
15 never presented during my trial. This evidence was either
16 concealed or not presented during my trial. All the other
17 evidence that were submitted, like the swab, they didn't
18 have any other evidence to proceed with the case. The
19 officer took the case to the Fourteenth Judicial Circuit to
20 discuss the facts of the case. There was evidence presented
21 by the Solicitor's Office that they didn't have enough
22 probable cause to keep me detained. They went before Howard
23 P. King on January, 2007, for a Schmerber Hearing to request
24 blood samples, and Judge Howard P. King asked why this man
25 wasn't indicted yet. They said they needed more evidence to

1 determine if I was the profile -- fit the description of the
2 profile that they obtained from SLED. But like I said, it
3 was in August of 2006 that this profile came back as an
4 unknown male.

5 THE COURT: Was that turned over to your lawyer or did
6 you just not see it in any way?

7 MR. JOHNSON: No response.

8 THE COURT: Do you know if that was turned over in
9 discovery?

10 MR. JOHNSON: This was discovery after I did further
11 investigation of the case. I went to school and studied
12 criminal justice and was able to go back over the facts and
13 that's when I submitted the evidence to the Court.

14 THE COURT: Did you file an appeal in this case?

15 MR. JOHNSON: The lawyers that they appointed for me,
16 they filed it.

17 THE COURT: That's what I mean; so you had an appeal.
18 Did you also file a PCR, a post-conviction relief?

19 MR. JOHNSON: Yes.

20 THE COURT: And so both of those have been exhausted
21 and denied?

22 MR. JOHNSON: Well, most of the evidence, everything
23 that I claimed on the application were not ruled upon, so I
24 asked my PCR attorney to follow Rule 59, a motion to
25 reconsider. He failed to do so.

1 THE COURT: Okay.

2 MR. JOHNSON: Because I wanted the judge to rule on
3 every issue that I had on the application. One was
4 prosecuted as misconduct and violation of my due process.
5 The judge stated on the record that he did not give the
6 Petitioner an opportunity to respond on those issues. So
7 this was a part of me filing the application to prove my
8 innocence.

9 THE COURT: Okay. And my question again is how is this
10 going to be any different this time than it was when it was
11 originally submitted?

12 MR. JOHNSON: Because there was no semen that was found
13 from the petitioner, myself. There was no semen. It was
14 alleged that there was semen found in the rape kit. It's
15 impossible; I never had sex with the woman. So now the
16 State has the burden of proving that they found my semen in
17 the rape kit. Furthermore, there was a sheet that was used
18 to convict me as well. They said my semen was all over the
19 sheet. It's impossible. I never had sex with the woman.
20 Well, it was presented during my PCR. My counsel was
21 questioned why she did not challenge the DNA evidence. She
22 stated on record that she used it to my advantage by not
23 challenging the evidence. So I have an obligation, Your
24 Honor, under the Constitution to challenge that DNA. It is
25 my Constitutional Right.

1 THE COURT: All right. Well, let me do this. I am
2 going to take it under advisement. I am going to look
3 through the evidence. We will go from there.

4 MR. JOHNSON: Thank you.

5 THE COURT: Thank you, sir. Do we have a good address
6 for where he is, Ms. Jordan?

7 ASST. SOL. LEMPESIS: Yes, Your Honor, we have his
8 information.

9 THE COURT: Okay. Where are you housed right now, sir?

10 MR. JOHNSON: At the Allendale Correctional
11 Institution.

12 MR. JOHNSON: And Your Honor, I have his most recent
13 address and I.D. number from May 29th of 2018. Is that still
14 accurate, Mr. Johnson?

15 THE COURT: What Unit is he in?

16 ASST. SOL. LEMPESIS: Unit F-1

17 MR. JOHNSON: Yes, F-1.

18 THE COURT: Yes, okay. I just need to be able to find
19 you.

20 MR. JOHNSON: And another thing, the petitioner
21 requested from the Solicitor's Office copies of the Orders
22 for destruction of records and I haven't been able to obtain
23 that from the Solicitor's Office that was signed by SLED and
24 expunging all of the charges that were dismissed. And I
25 asked for those from the Solicitor's Office. I requested

1 it.

2 THE COURT: So there were other charges that were
3 dismissed against you?

4 MR. JOHNSON: Yes, there were five charges that I went
5 to trial on.

6 THE COURT: Okay.

7 MR. JOHNSON: I was acquitted on the charges of
8 burglary, first degree, and possession of a weapon during
9 the commission of a violent crime and petty larceny.

10 THE COURT: Okay.

11 MR. JOHNSON: Evidently there was no evidence that
12 there was \$472 dollars missing from this victim. There was
13 no evidence to tie me as the perpetrator of the sexual
14 assault.

15 THE COURT: Did she ID you?

16 MR. JOHNSON: In court identification.

17 THE COURT: That's what I'm asking. Did she ID you?

18 MR. JOHNSON: There was a photo lineup done. She could
19 not pick me out of the photo lineup.

20 THE COURT: She did in court is what I thought.

21 MR. JOHNSON: Yes, ma'am.

22 THE COURT: And you didn't know her?

23 MR. JOHNSON: I never knew this woman. But I remained
24 silent and went through the process and now I'm here back
25 with my appeal.

1 THE COURT: Who represented you at trial?

2 MR. JOHNSON: Stephanie Smart-Gittings.

3 THE COURT: Okay. Well, sir, let me look at everything
4 and review it all.

5 MR. JOHNSON: I'm asking for exoneration and
6 compensation, Your Honor.

7 THE COURT: I understand.

8 MR. JOHNSON: Thirteen years of incarceration.

9 THE COURT: Thank you, sir. I will let you all know
10 something.

11 ASST. SOL. LEMPESIS: Thank you, Your Honor.

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Dated: Tues. Nov. 17th, 2020

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

P.O. Box 11629

Columbia, SC. 29211

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NOV 19 2020

SC Court of Appeals

RE: Nathaniel Johnson Jr. # 211574, -vs- State of South Carolina
Court hearing Transcript. Case No: 2006-GS-07-D1640, D1641
Appellate Case No: 2020-000110

Dear Mrs. Kitchings:

Today, I received the DNA Testing Court hearing transcript, from the official Court Reporter, Mrs. Rebecca H. Hill. Please be advised that the undersigned counsel have served the opposing parties listed below, a true copy of the Court hearing transcript.

cc:

William M. Blitch, Jr. Esq.

Isaac McDuffie Stone III. Esq.

Sincerely,
By Nathaniel Johnson Jr. #211574
Mr. Nathaniel Johnson Jr. #211574
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