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Jul 20 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case Tracking Number 2018-001289

The State,

Appellant,

v.

Corey Brown,

Respondent.

PETITION FOR REHEARING

On July 7, 2021, this Court reversed and remanded the trial court's decision granting Brown a new trial. This Court misapprehended or overlooked the impact of the evidence and its own factual findings. Given this Court's acknowledgement that the only evidence in the record was not of a nature which must be turned over to the defense for use at trial, there was no basis as a matter of law for a grant of a new trial. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find as a matter of law the circuit court erred in granting a new trial based on the evidence in the record, and reverse the grant of a new trial without the need for a further remand.

This Court correctly determined the only evidence in the record was a rejected plea agreement and Evans' hope and belief he would receive a more lenient sentence if he testified against Brown. There is no evidence, and Brown has pointed to no evidence, demonstrating any agreement was reached between Evans and the solicitor—or even that there were sufficient discussions which could be construed as an agreement between Evans and the solicitor.

The Fifth Circuit Court of Appeals acknowledged there is no “Supreme Court decision holding that the subjective beliefs of the witnesses regarding the possibility of future favorable treatment are sufficient to trigger the State’s duty to disclose under Brady[] and Giglio” Hill v. Johnson, 210 F.3d 481, 486 (5th Cir. 2000). A defendant’s “general and hopeful expectation of leniency is not enough to create an agreement or an understanding.” Collier v. Davis, 301 F.3d 843, 849 (7th Cir. 2002); see also, Hudson v. State, 277 Ga. 581, 586(5), 591 S.E.2d 807 (2004) (“That [the witness] may have expected help for his cooperation does not establish that a deal or agreement was made between him and the State.” (Citation omitted.)). Further, “[t]he [Giglio] rule does not address nor require the disclosure of all factors which may motivate a witness to cooperate. The simple belief by a defense attorney that his client may be in a better position to negotiate a reduced penalty should he testify against a codefendant is not an agreement within the purview of Giglio.” Alderman v. Zant, 22 F.3d 1541, 1555 (11th Cir.1994). “The government is free to reward witnesses for their cooperation with favorable treatment in pending criminal cases without disclosing to the defendant its intention to do so, provided that it does not promise anything to the witnesses prior to their testimony.” Shabazz v. Artuz, 336 F.3d 154, 165 (2d Cir. 2003). Additionally, “Giglio does not require disclosure of rejected plea offers; the duty to disclose is dependent upon the existence of an agreement between the witness and the government.” United States v. Rushing, 388 F.3d 1153, 1158 (8th Cir. 2004).

No case law has been presented at the hearing or on appeal by able counsel that would require turning over a rejected plea or a testifying co-defendant’s hopes and subjective desire for a better deal. There is no evidence in this case which could be found to have been required to be disclosed by the State which was not disclosed, and, as a result, there is no basis for remanding to the circuit court. This Court should make the determination that the evidence it found in the

record was insufficient as a matter of law to constitute material evidence for a determination of guilt or innocence. Additionally, this Court should make the determination that disclosure was not appropriate or necessary and so there was no violation warranting a new trial as a matter of law. Therefore, this Court should reverse the grant of a new trial and reinstate Brown's convictions and sentences.¹

In the alternative, if this Court believes a remand is necessary, it should clarify its opinion. The Court remanded "to the trial court to make specific findings on what basis the court is granting a new trial." This Court should clarify that on remand the trial court may determine, consistent with the findings in this Court's opinion that there was no evidence of any deal or other agreement with Evans necessitating disclosure to the defense, a new trial should not be granted. This Court should specifically note the circuit court is not locked into a finding of a grant of a new trial, but instead to reconsider his finding in its entirety in light of this court's conclusion that there "was no evidence in the record to support the conclusion that the State reached a deal with Brown's testifying co-defendant."

¹ The State craves reference to its brief for a more detailed discussion to the extent one is warranted.

CONCLUSION

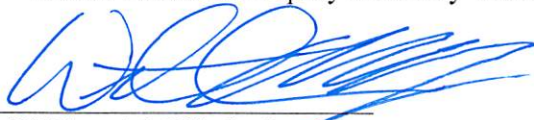
For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court erred in granting a new trial and reinstate Brown's convictions and sentences. In the alternative, if this Court believes remand is necessary, the remand should allow the trial court to fully reconsider its ruling in light of this Court's holding that there was no evidence of a deal and allow for the possibility that the circuit court could ultimately deny the motion for a new trial.

Respectfully submitted,

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PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Petition for Rehearing by emailing a copy to Appellant's counsel of record, David Alexander, at his primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 20th day of July, 2021.



LEIGH ANN STONE

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Leigh Ann Stone

From: Leigh Ann Stone
Sent: Tuesday, July 20, 2021 4:38 PM
To: dalexander@sccid.sc.gov
Cc: William Blich; lmatthews@sccid.sc.gov
Subject: The State v. Corey Brown (2018-001289)
Attachments: BROWN Corey - Petition for Rehearing - 2018-001289 (02649576xD2C78).PDF

Good Afternoon Mr. Alexander,

Attached please find a copy of the Petition of Rehearing in The State v. Corey Brown (2018-001289). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

LEIGH ANN STONE, Legal Assistant
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