

February 9, 2022

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SC Court of Appeals

Lavar A. Smith 00282306
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: The State v. Lavar A. Smith
Appellate Case No. 2021-000431

ATTN: Jenny Abbott Kitchings

**Please see the enclosed USB Drive. It includes the body cam footage. Please download the VLC Media Player software to view.

Table of Authorities

Cases

- Napue V. People of ill. Supreme Court of the United States June 15,1959 360 U.S. 264 79 s.ct 1173
- Giglio V. US Supreme Court of the United States Feb 24 1972 405 U.S. 150
- Riddle V. Ozmint Supreme Court of South Carolina May 22 2006 369 s.c. 39/631 S.E.2d70
- Simmons V. State Supreme Court of South Carolina June 8 2016 416 S.C. 584 788 S.E. 2d70
- Gibson V. State Supreme Court of South Carolina 334 S.C. 515,514 S.E.2d 320(1999)
- Washington V. State, 324 S.C. 232, 478 S.E. 2d 833 (1996)

Statement of issue on Appeal

Did trial court err in admitting testimony of witness Sherman Ceo in which she stated that "She arrived on scene before the police arrived with their body worn cameras and the victim told her that I robbed him and shot him" The state violated my 14th Amendment Right to the U.S. Const. Due process and equal protections of Law, when it presented known false testimony. See Gibson V. State, 344 S.C. 515, 514, S.E. 2d 320 (1999).

Argument

Trial court erred in admitting testimony of witness Shermain Ceo in which she stated that she arrived on scene before the police arrived with their body worn cameras and the victim told her that appellant robbed him and shot him in violation of the 14th amendment rights of the consti. Due process and equal protections of Law.

Lt. Gore was the first officer on scene the night this incident occurred. (Though he was never called to testify) R. 139 I.17-25, He had his body worn cameras on and recorded everything that transpired. Shermain Ceo (witness) can be seen walking up on the scene and asking "What happened" and several people standing nearby told her that (Eli) appellant shot the victim. She then can be seen and heard talking to the victim on body camera video the victim never stated that Eli robbed him or shot him while talking to Ms Ceo. Ms Ceo was the only witness on the scene that testified that the victim stated that the appellant robbed him; no one else testified that they heard this conversation.

The State presented to the court that they intended to prove that appellant killed the victim during the commission of an armed robbery (appellant was never charged or indicted for armed robbery) R. 182, I. 21- R. 186 I. 11. The state argued in pretrial R. 120 I. 10-14 during opening statements R. 201 I. 7-13, during trial R. 358 I. 18-22, R. 360 I. 4- R. 368 I. 25, and in closing arguments R. 655 I. 18-25, That witness (Ceo) was on scene before the police arrived and that the victim told her appellant "robbed him and shot him" which was not true, R. Lt. Gore body camera video. Ms. Ceo also wrote a voluntary statement the night of the incident in which she stated "There was a police car on scene when she arrived". R. 371 I. 1- R. 373 I. 25, Mr Stucks lawyer for appellant got witness (Ceo) to admit that there were officers on the scene the night of incident.

The State also used Ms Ceo as a witness to bolster the credibility of another witness Ms Patricia Gerald who is Ms Ceo's mother. Ms Gerald testified that she "saw appellant leave the scene of the incident" but she didn't tell the police she saw appellant and her reason was that "her daughter and son told her not to say anything". R. 168 I. 2- R. 169 I. 25 . The State also argued that Ms Ceo testimony was important to their case because she corroborated her mother's testimony and because her testimony proved the motive in this case, R. 135 I. 10-22, R. 655 I. 18-25

Ms Ceo was not on the scene before the police arrived and her testimony was false and the State should have known her testimony was false because they were in possession of Lt. Gore's body camera video from Dec 3 2017, to April 2021, when the trial began. The State presented false testimony to the court and to the jury. Deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice; the same results obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears. *Washington V. State*, 324 S.C. 232, 478 S.E.2d 833 (1996). See also *Giglio V. U.S.* 405 U.S. 150, 92 S. ct. 763, 31 L.E.d 2d 104 (1972), See *Riddle V. Ozmint*, 369 S.C. 39, 631 S.E. 2d 70 (2006). See *Miller V. Pate*, 386 U.S. 1, 87 S. ct 785, 17 L.Ed. 2d 690 (1967) Deliberate misrepresentation invalidated conviction.

But for the erroneous admission of the testimony by Ms Ceo the outcome of the trial would likely have been different. This court should reverse.

Lavar A Smith



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