8/10/23

FILED
2023 AUG 28 A 11:53
ROBESON CO., C.S.C.
BY

Dear Madam Clerk;

Please find enclosed the seventh supplement to the Motion for Appropriate Relief pending before Judge Charles Winston Gilchrist.

According to the tracking number, your office received the sixth supplement I filed. On June 12, 2023 Ms. Christine Mumma verified that your office did receive ~~verify~~ it.

Please send me a file stamped copy of the motion I sent (the sixth supplement) and this motion as well. Quite frankly, the states employees in the prison, here and elsewhere, have been obstructing my access to the court for some time, including by sterling my outgoing mail. It is important that I verify your office received and filed all motions I filed.

Thankyou for your service in this matter. Also, I will be initiating criminal process by filing an affidavit to you or another judicial official soon. Please send me any forms if you prefer that I fill them out. Otherwise, I'll simply file the affidavit pursuant to N.C.G.S. 15A-304 to you or a judge. Thankyou.

Sincerely,

STATE OF NORTH CAROLINA
v.
DANIEL A. GREEN

7th Supplement to Defendants Motion for Appropriate Relief

NOW COMES the defendant, Daniel A. Green, pro se moving this Court to grant defendants motion for Appropriate Relief on the grounds that defendants Right to effective assistance of trial and appellate counsel, defendants Right to a unanimous jury verdict, and defendants right to due process were all violated. These rights are guranteed by the United States Constitution, through the Fifth, Sixth, and Fourteenth Amendments, and these rights are guranteed by the North Carolina Constitution, Article 1 §19, §23, §24 and §35. In support of this claim defendant shows the following:

I. Ineffective Assistance Of TRIAL AND APPELLATE Counsel By Not FILING A MOTION FOR APPROPRIATE RELIEF To SET ASIDE THE JURYS NONUNANIMOUS VERDICT OF GUILTY OF FELONY MURDER WHEN THE COURT-ELICITED FINDINGS BY THE JURY

UNEQUIVOCALLY REVEALED THAT THE JURY FAILED TO FOLLOW THE COURTS INSTRUCTIONS, AND FAILED TO UNANIMOUSLY CONVICT THE DEFENDANT OF FELONY MURDER

1. The facts and applicable law supporting this supplemental motion has been pled in the fifth and sixth supplement to Defendant's Motion for Appropriate Relief as the "Missing Element" claim in the Fifth supplement and a general ineffective assistance of counsel claim (appellate counsel) in the Fifth supplement. It was pled by defendant in the Sixth Supplement as Ineffective Assistance of Trial and Appellate Counsel and briefed under the titles of

A. The Standard of Prejudice In State v. Green;

B. Appellate Ineffective Assistance of Counsel Was Not Based on Strategical Considerations;

C. Motion and Memorandum of Law On Assessing and Identifying Prejudice By Pinpointing Jurors Verdict,

D. And, the whole motion and supporting briefs which address:

1. The pending status of the State v. Green Motion for Appropriate Relief;

2. The U.S. and N.C. Constitutional Requirements for a verdict to be unanimous to be valid;

3. The U.S. and N.C. Constitutional Requirements for a verdict to be unanimous on each and every element of murder, even Felony murder;

4. The U.S. and N.C. Constitutional Requirement that the jury unanimously convict the defendant of a crime beyond a reasonable doubt and the crime in State v. Green, Felony Murder, is only proven ~~to~~ DG under the fact pattern of State v. Green if the State proved that defendant robbed and committed the actus reus of killing the victim beyond a reasonable doubt;

5. That the Courts instructions to the jury requiring them to unanimously find that the defendant himself killed James Jordan was accurate and the jury, by law, is presumed to follow the Courts instructions;

6. That ~~the~~ DG. notwithstanding the presumption that the jury followed the Courts instructions, the Court and the State rebutted that presumption by eliciting the ~~Defendant's~~ DG. jury's verdictum, in writing, that unambiguously and indisputably proves that the jury did not unanimously convict the defendant of the killing element which, if not proven, invalidates every murder charge and conviction;

7. That the only possible strategical reason any counsel could possibly have not to file a motion for

appropriate relief to set aside the jury's verdict of guilt would be to not vacate the felony murder conviction. There is no risk in challenging a conviction within 10 days of the judgement being entered, after ten days of the judgement being entered, or during the direct appeal. The reward would be a new trial on the felony murder conviction without capital punishment being an option;

8. The Motion and briefs also addressed the prejudice from counsels ineffectiveness being proven due to the fact that the jurys unchallenged verdictum completely impeaches and destroyed the states past or future reliance on Larry Demery's testimony as "credible" evidence, or overwhelming evidence of guilt of felony murder. The jury is the exclusive finders of fact at trial, their findings are binding on this court where neither the State nor defense has challenged the findings because there is no issue to give the court jurisdiction to rule on resolve it. The jury did not convict Defendant of the version Demery testified to - premeditated murder nor felony murder as required by law and the fact pattern of defendants trial.

9. To articulate the exact basis of this claim, the defendant repeats the request that this Court takes judicial notice of State of North Carolina v. Jermail Blake 275 N.C. App. 699, 2020; and State v. Garcia, 358 N.C. at 410, 409; State v. Veney, 259 N.C. App. 915, 917 (2018); State v. Lawrence, 365 N.C. 506, 512 (2012) Delaware, v. Van Arsdall, 475 U.S. 673, 681 (1986); Sullivan v. Lousiana 508 U.S. 275, 277-78 (1993); N.C. Gen. Stat. § 15A-1443(b) (2019) and, in particular, State v. Blake 275 N.C. App. 699, 709-711 (2020) since the only viable issue here is whether the ~~Court~~ Court elicited declaration by the jury verifying that they did not unanimously find that the Defendant killed James Jordan can be used to set aside the verdict without violating N.C. Gen. Stat. § 8C-1, Rule 606(b) in the same way ~~that~~ the that the judges hearsay statement that all the jurors in State v. Blake didn't believe Blake was guilty was used to challenge, with success, the jury's verdict.

10. The Appellate Courts dicta in the State v. Blake opinion that the Blake jury's misconduct did not involve just one juror but a "majority" is inapposite since, as this Court and the State

is aware, if only one juror fails to find a defendant guilty of All the elements of a crime beyond a reasonable doubt in accordance with the Courts instructions, the verdict of guilt is invalid by law. State v. Blake 275 N.C. App. 699, 711 (2020)

11. Further, as in State v. Blake, 275 N.C. App. 699, 711 (2020) the juror's misconduct is not "merely a matter of suspicion", the misconduct doesn't have to be proven by this Court conducting an "inquiry into the validity of the verdict". The transcript and the document used by the Court, with the States permission, (and, against the Defense lawyers objection) to elicit the jurors failure to find that the Defendant killed the victim with unanimity speaks for itself, it is self-authenticating and the Defendant has asked this Court to judicially notice it. One would think that all can agree that the judge's "confirmation" that all of the jurors in Blake didn't believe Blake to be guilty isn't more credible or stronger evidence than the St. v. Green document the jury filled out at the Courts instruction which states that an element of felony murder was not proven by the State beyond a reasonable doubt - the "killing" element - in State v. Green,

12. The defendant is not claiming that there was insufficient evidence to convict him on the charge of Felony murder. The defendant is aware that any testimony giving even a scientilla of evidence on all the elements of ~~a crime~~ Do. a crime is adequate to allow the jury to determine guilt or innocence, even if the crime of Felony murder doesn't always require a defendant to commit, by his or her own hand, the actus reus of killing,

13. The Defendant has claimed, and herein makes it crystal clear, that the jury did not follow the Courts instructions charged on Felony murder, the jury did not unanimously find that the defendant killed the victim which, in turn, means that the jury did not find that the defendant committed Felony murder because, having waived the Acting in concert instruction, having chosen to put on a case that nobody but the Defendant could have possibly killed the victim, the element of killing (which is essential to satisfying the states burden of proof for Felony murder) was not proven;

14. It would be a violation of N.C. Civil Rules of

Procedure, Rule 11 for an attorney to subscribe to the statement that "Defendant has been found guilty of first-degree murder based upon the theory of felony murder which does not require proof of Defendant's intent to kill or that Defendant was the triggerman. See State v. Mann, 355 N.C. 294, 311-12, 560 S.E.2d 776, 787 (2002)." The law cited by the State is inapposite and unequivocally misrepresented and both counsel subscribing and certifying this misrepresentation should be aware that the argument and statement of law is misrepresented in the Proposed Order Denying Motion For Appropriate Relief, Including Amendments and Supplements, page 70, that they have proposed this Honorable Court subscribe to, an attempt to lure this Court into unknowingly violating the Judicial Code of Conduct, Ethical Rules and laws requiring the Court and its officers to not falsely misrepresent facts and law, especially when dealing with vulnerable, uneducated laymen of law like this pro se defendant. In other words, knowingly or not, the States Attorneys, who are privileged officers of the Court, are attempting to do to this Court what was done to me when Larry Demery lured me into assisting him under

the false pretense that he killed a drug dealer who assaulted him and was a threat to his life in self defense, because he knew I was wrongly convicted and sent to prison for self defense. This is scary.

15. In State v. Bagley, 250 N.C. App. 509 (2016) Kristin Vicker represented the State, Guy Loringer represented the ~~State~~ Defendant. Acting in concert instructions, the State prosecuting the defendant under the doctrine of acting in concert, and inconsistent evidence were all discussed and were subjects of litigation. Ms. Vicker should know that, in direct contradiction to their statement, the facts and law of this case, the Courts instructions, and the applicable common law, the Defendant was found guilty of first-degree murder based upon the theory of felony murder which DOES require proof of Defendant being the triggerman*, and it requires the State to prove it beyond a reasonable doubt to a jury who unanimously agree that it was what the Defendant did. But, also, the State has conceded that the Courts instructions to the ~~jury~~ jury were indeed proper in the State's response to Defendants Fifth Supplement to the Motion For Appropriate Relief.

16. The State's concession that the trial Court's instruction were proper is warranted by law: Being present at or near the scene of the crime after the crime was committed is not adequate evidence to warrant charging a jury with an acting in concert instruction. The defendant would have to be both present at the crime scene and the evidence must be sufficient to show he is acting together with another who does the acts necessary to constitute the crime. In State v. Green the State waived the acting in concert instruction and the Court did not give it because there was no evidence ~~that~~ offered by the State that anyone but the Defendant killed the victim. This is covered in Defendants 6th Supplement to the Motion For Appropriate Relief which was filed, apparently, after the States proposed instruction was given but since the Office of Special Investigation has monitored every phone call made by the Defendant, even through former S.B.I. Agent Kim Heffney, who defined defendant while working for N.C. D.P.S. office of Special Investigation, the State knew far in advance of the filing what Defendant knows about acting in concert and that the State waived the acting in concert instruction which

means that collateral estoppel prevents the State from re-litigating the issue of whether the Defendant is guilty of murder due to the theory that the Defendant is guilty of murder by acting in concert with the actual killer of the victim. See State v. Joyner 297 N.C. 349 (1979)

STRUCTURAL ERROR

17. As the Blake Court held, the juries failure to follow instructions given by the Court, whose exclusive province it is to instruct the jury on the laws applicable to the evidence presented at trial, is a structural error. Why?

The structural integrity of a trial is maintained by the Court actors playing their respective roles and not usurping the procedural powers and territory occupied by the others.

The exclusive province of the jury is to find facts from the admissible evidence. Their sworn obligation is to follow the Courts instructions on the law. The exclusive province of the Court is to analyze the evidence it admits and use it to determine what laws are applicable and to instruct the jury accordingly.

The Attorneys province is to present the evidence, to examine the evidence, to challenge and test the evidence AND to move the Court with arguments law and facts.

In this case the Court did properly instruct the jury. The jury appeared to follow the Courts instructions when they convicted the Defendant but, they didn't. Normally, the defendant would have no way to prove that the jury didn't follow the instructions of the Court, even in a capital punishment trial because usually, to meet the Enmund requirement for a defendant to be eligible for capital punishment, the Court elicits an indication from the jury that they find that the defendant killed, intended to kill or attempted to kill or played a major role in the underlying offense without requiring the jury to specify which option they unanimously found to be a fact beyond a reasonable doubt. The question is posed like "Do you find, unanimously, beyond a reasonable doubt that the Defendant killed or attempted to kill, or planned to kill the victim or played a major role in the underlying offense, Yes or No?" This prevents the Defendant

from proving an option that could invalidate the verdict.

But, in State v. Green, Judge Gregory Weeks required the jury to specify which option they all found to be true beyond a reasonable doubt. This is the only reason I, the defendant can prove that they did not unanimously find that I ~~kill~~ killed James Jordan beyond a reasonable doubt. If the Court had not elicited the jurys verdictum (a jurys verdict is defined as their answer to any issue put to ~~them~~ them) in a manner that identified their failure to convict me of killing the victim, as instructed, the defendant couldn't prove it without violating the rules prohibiting the jurors from offering testimony about their deliberations.

Here, in State v. Green the State supported the Courts decision to craft this unique document that elicited the jurys verdictum and published it as a public record which makes it admissable without violating the sanctum sanctorum of the jurors deliberative process. This is God piercing the veil and illuminating that which is, as a policy, hidden. This Court is moved to listen to the voice of silence, its conscience

and not ignore what has been hidden in open but is now lit.

18. Trial Counsel was ineffective for not filing a motion to set aside the jurys verdict based on the pre-judgement declaration by the jury that ~~[illegible]~~ Do reveals that they did not follow the courts instructions, which the law presumes they followed, and convict the Defendant ~~[illegible]~~ After unanimously finding beyond a reasonable doubt that the defendant killed James Jordan himself (NOT that the defendant could be convicted of killing James Jordan under agency theory, that is to say, that the Defendant is responsible for the actions of the person who shot and killed James Jordan under the theory of acting in concert with them.) There is no excuse, no strategical justification, no rationalization for Defense Attorney, one paid almost a quarter of a million dollars by the State for his representation of Defendant, not to motion the court to vacate the conviction within ten days after the judgement was entered when the documented evidence

proved that the jury didn't follow the Courts instructions.

19. Appellate Counsel, Janine Fodor, was ineffective for not filing a motion for appropriate relief in the North Carolina Court of Appeals to claim that trial counsel was ineffective for not filing a motion to set aside the verdict as pled in paragraph 18, supra, and for the reasons argued in the Fifth, Sixth and Seventh supplement to Defendants Motion for Appropriate Relief. She's ineffective for not filing it herself.

Defendant Never Waived Right To A Jury TRIAL

20. Trial Counsel, Woodberry Bowen, a former prosecutor in Robeson County, Angus Thompson, a former Public Defender in Robeson County and appellate counsel, Janine Fodor, co-author of the first edition of N.C. Public Defenders Manual, written while defendants appeal was pending and published by UNC-Chapel Hill's Institute of Government (and co-authored by Henderson Hill, former N.C. Death Penalty Resource Center, Attorney, former attorney for the first African American/Jewish law firm in N.C., Ferguson and Stein in Charlotte N.C.) ineffectiveness can't be attributed to the Defendant.

21. Defendant's exclusive province to make certain decisions

has been recognized by the United States Supreme Court. Those rights include, but are not limited to, the right to a trial by jury. Implicit in the right to a trial by jury is the right to a jury that follows the Courts instructions, which must be unanimous in their finding of guilt, and the right to a jury that only find a Defendant guilty after the State has proven guilt of the charges tried BEYOND A REASONABLE DOUBT. By "Charges" and "Crimes" it is obvious that every element of the crime charged is meant.

21. At the time of the trial, upon information and belief, the defendant did not even have the right to waive a trial by jury but even if that was not the case, N.C. required all waivers to be knowing and (conjunctive; not disjunctive) intelligent.

22. Defendant has never waived the right to a jury trial and never waived the right to challenge these violations of a right to a jury trial grounded in the jury's misconduct in not following the Courts instructions, the jury's failure to unanimously convict the defendant of every element of a crime beyond a reasonable doubt. To the contrary, the Defendant, in Court, asked Mr. Thompson and Mr. Bowen to challenge the verdict.

23. Mr. Thompson looked very sad, rubbed my arm and said he couldn't because it was an "inconsistent verdict", Mr. Bowen also looked sad and agreed that it couldn't be challenged because it was a "compromised verdict" and that it happens "all the time".

24. In conversations with Ms. Foder, I told her the same thing that I told counsel, that I wanted to challenge the conviction based on the jurors revelation that they didn't find that I killed the ~~verdict~~ victim. She told me that when a defendant feels in their gut that something wrong happened during their trial, that that, is what the attorneys should focus on. I never saw her again, this was while I was waiting for her to file my appeal.

25. A "Compromise Verdict" is a verdict returned without regard to pleadings, evidence, contention of parties or charge of court. Defendant has cited State v. Blake 275 N.C. 699 (2020) but the legal basis of State v. Blake, in part, and of Defendants argument has been the law in N.C. since April 19, 1939. In Vandiford v. Vandiford 215 N.C. 461 (1939)

26. As in Vandiford, the verdictum in State v. Green was in variance with the pleadings. (For sake of clarity, the Defendant uses "verdictum" to refer to the jury's answers to the issues, as documented during the sentencing stage, on whether defendant killed the victim, to distinguish between the guilty verdict reached before the sentencing stage. In fact "verdict" and "verdictum" are Latin words meaning the same thing: an expressed conclusion; a judgement; the jury's true speech. In this case the particularized verdictum is controlling; not the generalized verdict of guilty (see ~~[illegible]~~ the Fifth Supplement to the M.A.R. on the "Missing Element Claim").

27. The verdictum is at variance with (1) the evidence by the State that the Defendant killed James Jordan, (2) the State's trial theory that the Defendant killed James Jordan, (3) the Court's instructions that the jury had to find beyond a reasonable doubt that the Defendant killed the victim.

28. As in Vandiford, the verdict in State v. Green "is manifestly wanting in legal requirements." and "bears the earmarks of compromise".

29. The Justice Center has nominated Angus Thompson to receive it's Defender of Justice award. As a recipient of such a prestigious award I trust that Mr. Thompson will verify these facts so that the justice delayed in State v. Green will not be ~~denied~~ denied any further

30. The Defendant also is exceedingly grateful to North Carolina Central University Professor of Law, Tamika Moses for her elucidating comments on this claim on behalf of NCCU's Alumni and staff who have been involved in this case from the beginning. It's been quite helpful in researching this claim and supplementing it accordingly

31. Defendant also motions the Court to order Attorney Christine Mumma to surrender the audio recording of Irv Muncies, Whitley Carpenter, Ivy Johnsons and the former Duke Law Students recording of their interviews with former juror Paula Lockler A.K.A. Paula Manuel which defendant trusts will shed further light on this claim, upon information and belief. Defendant hereby supports this claim with this recording when Ms. Mumma surrenders it, with the exhibits on

record already and referenced herein, in the sixth supplement and the fifth supplement, including the jury's answer to the issue which proves defendant was not duly convicted of killing the victim, the indictment, the trial transcript in totality, but, most pertinent, the Courts instructions to the jury, the States opening statement and closing argument, and Demery's testimony. These exhibits will establish that the jurys findings that the defendant didn't kill the victim isn't only a violation of due process but also that it invalidated the verdict when viewed with regard to pleadings, evidence, contention of parties and the Courts instructions to the jury.

32. Finally, the Defendant moves the Court for a hearing on this claim and the related claim in the Sixth Supplement. Both evidentiary hearing and a hearing on oral arguments. For the sake of efficiency, the adjudication of this claim requires that it be held first since, even if this Court rules contrary to precedence on this claim, the facts established, which are incontrovertible, will establish the burden

that this defendant must meet which is to prove by a preponderance of evidence that if not for the Constitutional errors that occurred in Defendant's trial, there is a reasonable ~~presumption~~ possibility that at least one juror wouldn't have found that the defendant killed the victim since the states burden at trial was to prove beyond reasonable doubt that the defendant was guilty of every element of felony murder, including, obviously, the killing element.

WHEREFORE DEFENDANT Respectfully Moves this Court of Honor to grant these Motions, and vacate the Felony Murder conviction.

This the 23rd Day of July, 2023

Daniel Green #0154242,

4600 Swimpfox Hwy West
Tabor City, N.C.
28463

Getting Out.com
Esse Quam Videri.me
Text Behind.com

CERTIFICATE OF SERVICE

The Foregoing Motion For Appropriate Relief, Seventh Supplement was/is served upon the North Carolina Attorney General's office by giving it to Notary Public Ms. Johnson, who is an employee of the State of North Carolina, employed as a "Personal Assistant", to be mailed by the U.S. postal Service, addressed to:

N.C. Attorney General, Josh Stein
Special Deputy Attorney General, Kristin J. Uicker
Assistant Attorney General Benjamin Szany
114 W. Edenton St. Raleigh, N.C. 27603

I am not allowed by staff to do anything with the motion notarized by Ms. Johnson except to surrender it into her custody and control to mail it. Noncompliance and Resistance with this directive will ultimately result in death after being gassed with mace, electrocuted with stun guns and/or tasers and beat with hands, feet, and sticks as is the practice and policy of Tabor Correctional Institution.

This the 17th day of August, 2023

Daniel Green

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COURT FILE NUMBERS: 93 CRS 15291-15293

STATE OF NORTH CAROLINA)	AFFIDAVIT OF DANIEL GREEN
V.)	
DANIEL ANDRE GREEN)	
)	

NOW COMES, Daniel Green, who states the following under oath:

1. I am over the age of 21, am competent to make this affidavit, and the statements contained herein are true of my own personal knowledge;

2. The Seventh Supplement of Defendants Motion For Appropriate Relief is hereby verified and certified as true to the best of my knowledge based on my own personal knowledge, research and upon information and belief.

3. This motion is in compliance with Rule 11 of the North Carolina Civil Rules of Procedure and North Carolinas State Motto "Esse Quam Videri."

4. Further, affiant sayeth not.

Daniel Green

This the 24 day of August 2023.

Affirmed ORS

~~Sworn~~ To and Subscribed before me this
24th day of August, 2023

Notary Public

OCTAVIA R. JOHNSON
Notary Public
Brunswick County
My Commission Expires
6/1/2025
NORTH CAROLINA

My Commission Expires 6/1/2025

Copy Deft & Judge Gillespie
8-28-23
JMS