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NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
DUPLIN COUNTY, C.S.C. SUPERIOR COURT DIVISION
DUPLIN COUNTY FILE NO. 92 CRS 4389-4391
BY _____

STATE OF NORTH CAROLINA }
 }
 vs. }
 }
 LEVON JUNIOR JONES }
 Defendant }
 }

**NOTICE OF RECANTATION, MOTION TO DISMISS THE INDICTMENTS,
AND MOTION IN LIMINE TO PROHIBIT LINE OF QUESTIONING OF WITNESS**

NOW COMES Levon Junior Jones, the defendant, by and through counsel, in view of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, Article I, Sections 19, 23, and 27 of the North Carolina Constitution and N.C. Rules of Evidence 401, 402 and 403, and hereby notifies the State that its key witness – Lovely Lorden – recants her allegations against Mr. Jones. Further, with the State being upon such notice, Ms. Jones moves for dismissal of the charges against him or, in the alternative, preclusion in limine of Ms. Lorden’s prior testimonial allegations against him.

In support of this motion, Mr. Jones shows unto the Court:

**I. The State Cannot Proceed Upon the Empty Indictments
Supported Only By the False Accusations of Lovely Lorden.**

1. This case is a retrial. United States District Court Judge Terence Boyle overturned Mr. Jones’s first conviction because Mr. Jones’s lawyers were ineffective in defending him, particularly in their failure to impeach Lovely Lorden. As the only eyewitness in a case with absolutely no defendant statement, no co-defendant statements, no forensic evidence, or other evidence inculpatng the defendant, Judge Boyle found Lorden to be "a witness crucial to the prosecution's case." Boyle Dec. at 12.

2. In fact, without Lovely Lorden, the State has no case against Mr. Jones. No witness or other evidence inculpates Mr. Jones. Boyle Dec. at 2.

3. At the first trial of Mr. Jones, Ms. Lorden testified that she went with Mr. Jones and two other men to the house of Leamon Grady on the night he was killed. Boyle Dec. at 3. She testified that the men went into Mr. Grady's home and that she then heard two gunshots.

3. Lovely Lorden now recants each of these critical facts. She no longer alleges that

they went to the home of Leamon Grady the night he was killed, that she saw Mr. Jones enter Mr. Grady's home, or that she heard shots. In fact, in a sworn affidavit, Ms. Lorden now states that she believes Mr. Jones to be innocent of these charges:

* "Regarding the events that are alleged to have occurred on the night of Leamon Grady's death, February 27, 1987, I am certain that Bo did not have anything to do with Mr. Grady's murder." Exhibit A, ¶ 30 (emphasis added).

* "I have never saw Bo Jones shoot anyone. I do not know what happened inside Leamon Grady's home on the night Mr. Grady was killed." Exhibit A, ¶ 31.

* "I am not certain that Bo and I actually went to Mr. Grady's home on the night Mr. Grady was shot." *Id.* at ¶ 22.

* "I never actually heard any shots at any time I was at Lemon Grady's home. I never head any arguing at any time I was at Mr. Grady's home." *Id.* at ¶ 23.

* "Dalton Jones told me details of the murder of Mr. Leamon Grady. Much of what I testified to as the events of February 27 and February 28, 1987 was told to me by Dalton Jones. Much of what I testified to was simply not true. Dalton Jones let me know what he wanted me to say in my testimony for both Bo Jones' trial and Larry Lamb's trial." Exhibit A, ¶ 26.

4. Even before Ms. Lorden's recantation, the State's case proved weak. Duplin County District Attorney Dewey Hudson testified at the habeas hearing on this matter, admitting that it was "a close case for the jury" and "one of the most difficult cases I've prosecuted." Vol IV, Tr. Of Federal Hearing pp, 87, 90. He acknowledged that his case "relied on the testimony of one witness." *Id.* at 76. He admitted that Ms. Lorden's testimony at the first trial left "open for doubt an argument as to what happened inside." *Id.* at 97.

5. Now that Lovely Lorden has recanted her prior allegations, the State has no evidence against Mr. Jones. The indictments are based entirely on the testimony of Lovely Lorden. Because her allegations against Mr. Jones are false, and based only on information given to her by Detective Jones, the indictments now proves empty. The State is on notice that the allegations of its indispensable star witness are false.

6. Deliberate deception of the court and the jury by the presentation of evidence known by the prosecutor to be false "involves[s] a corruption of the truth-seeking function of the trial process," *United States v. Agurs*, 427 U.S. 97, 104(1976), and is "incompatible with 'rudimentary demands of justice.'" *Giglio v. United States*, 405 U.S. 150, 153(1972) (citation omitted). Moreover, deliberate deception is inconsistent with the principles implicit in "any concept of ordered liberty." *Napue v. Illinois*, 360 U.S. 264, 269(1959), and with the ethical obligation of the prosecutor to respect the independent status of the grand jury. *Standards For Criminal Justice* § 3-3.5, 3-48-4-49 (2d ed.1980); *United States v. Hogan*, 712 F.2d 757, 759-60 (2d Cir.1983); *People v. Pelchat*, 464 N.E.2d 447, 453 (N.Y. 1984)(holding that the "cardinal purpose" of the grand jury is to shield the defendant against prosecutorial excesses and the protection is destroyed if the prosecution may proceed upon an empty indictment).

7. Thus, upholding due process of law requires dismissal of this empty indictments. See U.S. Const. amend. XIV; N.C. Const. art. I, §

8. Mr. Jones has been incarcerated for close to eighteen years, and was formerly on death row, for a crime he did not commit. Ms. Lorden's recantation makes Mr. Jones's innocence clearer than ever. The interests of justice and requirement of due process cry out for immediate dismissal of the State's indictments and a judicial order freeing Mr. Jones.

II. In the Alternative, the State Must be Precluded From Relying on Lovely Lorden's Prior Statements as Substantive or Impeachment Evidence.

9. Because Lovely Lorden has recanted, the State may try to introduce her prior allegations. But none of those allegations are admissible for several reasons.

10. First, under N.C. Gen. Stat. § 8C-1, Rule 804(b)(1) (2003), the prior testimony of a witness may not be introduced unless the proponent of the hearsay establishes that the witness is not available. The State cannot meet that burden. Ms. Lorden is plainly available. No case stands for the proposition that a recanting witness is no longer available.

11. Second, all of Ms. Lorden's prior statements and testimony must be barred to uphold Mr. Jones's constitutional right to confrontation. See U.S. Const. amend. VI; N.C. Const. art. I, § 23. Under the Confrontation Clause, a witness's prior testimony and testimonial statements are inadmissible unless the defendant had an adequate opportunity to cross examine the witness in the prior proceeding. See *Crawford v. Washington*, 541 U.S. 36, 57 (2004) (citing *Mancusi v. Stubbs*, 408 U.S. 204, 213-216 (1972) (other citations omitted)). Where the State seeks to introduce such testimony, it has the burden of establishing that the prior opportunity to cross examine was adequate. The State cannot meet that burden where, as here, the prior opportunity to confront the testimony was not adequate because the defendant was represented by constitutionally ineffective counsel, resulting in the omission of a "significantly material line of cross." *Mancusi*, 408 U.S. at 214-15.

12. Here, a federal court has reversed Mr. Jones's conviction because counsel missed "significantly material line[s] of cross" examination of Lovely Lorden. *Id.* Accordingly, the State cannot prove that Mr. Jones had an adequate opportunity to confront Ms. Lorden in the first trial and her prior testimony is clearly admissible.

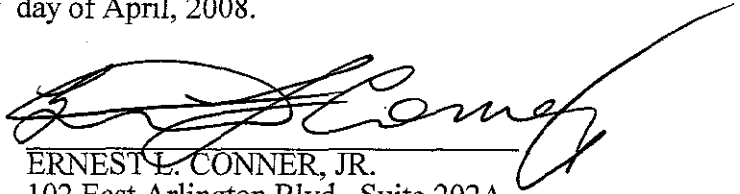
13. Nor can the State use Ms. Lorden's prior testimony to impeach her at trial because there will be no surprise as to her recantation. The State has been on notice of Ms. Lorden's recantation at least since it received discovery on or around March 26, 2008. As our Supreme Court has long held, "prior inconsistent statements are not substantive evidence and are only admitted to show the prosecutor was surprised by the witness's testimony at trial and to explain why the witness was called by the state." *State v. Cope*, 405 S.E. 2d 676, 679, 309 N.C. 47, 51 (1983) (emphasis added). Here, the State will have known for more than two months prior to trial¹ that Ms. Lorden is recanting, and cannot justify reliance on her prior statements or testimony under the guise of a supposed need to explain why it is calling Ms. Lorden as a witness. See also *State v. Bell*, 87 N.C. App. 626, 633, 362 S.E.2d 288, 292 (1987) ("In our opinion, the better practice continues to be for the trial court, before allowing impeachment of the State's own witness by a prior inconsistent statement, to make findings and conclusions with respect to whether the witness's testimony is other than what the State had reason to expect or whether a need to impeach otherwise exists."). Cf. *State v. Burton*, 322 N.C. 447, 451, 368 S.E.2d 630, 632-33 (1988) (precluding prior statements which were inconsistent with trial testimony, offered under the guise of "corroboration"); *State v. Sparks*, 297 N.C. 314, 332-33, 255 S.E.2d 373, 384-85 (1979) (similar).

14. Moreover, in light of the case law on point, to deny Mr. Jones' motion would rise to the level of a violation of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 19 and 23 of the Constitution of North Carolina.

¹ The defense discovery containing this affidavit was mailed to the State on March 24, 2008. Trial is set for May 12, 2008.

WHEREFORE, this Court should enter an Order dismissing the indictments. Only in the event that relief is denied, should this Court enter an Order, in the alternative, precluding the State from using Ms. Lorden's prior statements or testimony for substantive, impeachment or any other purpose.

Respectfully submitted this the 11th day of April, 2008.



ERNEST L. CONNER, JR.
102 East Arlington Blvd., Suite 202A
Greenville, NC 27858
Tele: (252) 321-2848
Fax: (252) 321-7195



CASSANDRA STUBBS
BRIAN W. STULL
201 W. Main Street Suite 402
Durham, NC 27701
Tele: (919) 688-4605

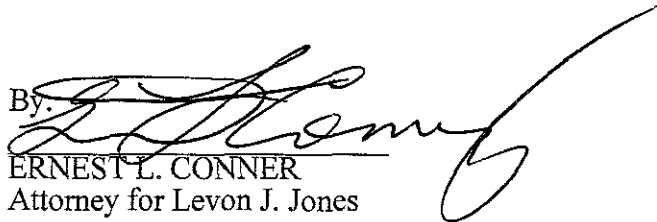
COUNSEL FOR THE DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this Motion in the above entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department properly addressed to the attorney or attorneys for said parties.

This the 14th day of April, 2008.

By:



ERNEST L. CONNER
Attorney for Levon J. Jones