STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PEOVIDENCE, SC. SUPREME COURT

STATE OF RHODE ISLAND

VS. SU-10-218
(PM/2009-0108)

RANDY ANDERSON

PETITION FOR REHEARING

Now comes the Petitioner, Randy Anderson, in pro se, and moves this Honorable Court for rehearing pursuant to Sup. Ct. R. App. P., Art. I, Rule 25.

Petitioner avers that this Court has misconceived Petitioner's appellate issue and, the Rhode Island Supreme Courts previous case law governing "deliberate nondisclosure" of evidence.

In this Courts June 27, 2012 opinion, this Court misconceived it's own prior case law standards for deliberate nondisclosure and adopted the "view" of the Superior Court Justices opinion on the value of the evidence withheld.

Petitioner contends the following in support of his Motion for Rehearing:

That counsel for Petitioner filed for discovery on September 13 , 1998, pursuant to R.I. Sup. Ct. R. Crim. P., Rule 16, and was informed by the State that all evidence was turned over. In November, 2006, Petitioner learned of a medical exam report generated in this which was not turned over prior to trial. Petitioner then

filed his second Post-Conviction Application, citing a deliberate nondisclosure of this medical report by the State. A hearing was held on May 17, 2010. The State readily admitted to having full knowledge of the medical report and subsequent failure to obtain and furnish the Petitioner with a copy. Petitioner contends that because the State had full knowledge of the medical report, and, found to be in possession of a June 1995 medical waiver form and failed to furnish defense with a copy of the medical report. This constituted a deliberate nondisclosure which automatically entitled this petitioner to a new trial.

In one of the most recent cases to ferret deliberate nondisclosure, State v. Stravato, 935 A.2d 948 (2007), see also, State v. DeCiantis, 24 A.3d 557 (2011). This Court has stated: " If the States nondisclosure is deliberate, neither the trial justice nor we need examine the remaining prongs of **Coelho** test [State v. Coelho, 454 A.2d 241 (R.I. 1982], prejudice is presumed, and the defendant is entitled to a new trial. Such a outcome recognizes that the purpose of Rule 16 is to ferret out procedural, rather than substantive prejudice. A defendant is automatically prejudiced when the State deliberately evades it's procedural obligations required by Rule 16. We have held that in situations in which the record indicates a deliberate nondisclosure. A new trial will be granted without inquiring into the degree of harm caused by the misconduct...stated another way, the States deliberate nondisclosure of evidence properly requested under Rule 16 is the prejudice."

This Court has deemed a nondisclosure as cited in, State v. Wyche, 518 A.2d 907 as:

"When the failure to disclose is deliberate, this Court will

not concern itself with the degree of harm caused to the defendant by the prosecutions misconduct, we shall simply grant the defendant a new trial...The prosecution acts deliberately when it makes a considered decision to suppress *** for the purpose of obstructing" or where it fails " to disclose evidence whose high value to the defense could not have excaped it's attention."

Given the cited language in State v. Stravato and, State v. Wyche, Petitioner contends that this burden of proving that first prong of Coelho test has been met.

Next, the State's contention as opinioned in this case is that all counsels for defendant was made aware of the medical report and thus anyone of them could have obtained a copy is without merit because:

1) The Attorney General's office had this information since June 1995 and never turned over a copy despite the fact that they obtained a medical records waiver form in June 1995;

2) Assistant A.G. Steve Regine took on this case in September 1998 and, trial counsel Mark Smith came on board in April 1998 (see 5/17/10 Hearing Tr. 19, attached).

When counsel Smith filed for discovery on September 13, 1998, Assistant A.G. Regine had no idea what counsel had or did not have, thus he had a duty to insure defense counsel was aware of the medical records...none the less, the State attempts to suggest, as they had in State v. Adams, 481 A.2d 718 (R.I. 1986), that because counsel knew or should have known of the existance of a medical exam report, it was not the State's duty to turn over a copy. In Adams, the State contended that because a doctor's report contained

a footnote regarding another doctors report regarding a bitemark on the victim, this footnote covered the State's duty to disclose. This Court disagreed. This Court stated: " It was the duty of the State to insure all evidence is turned over to defense...That perhaps it is quite possible that defense counsel could have missed these references, to the footnoted bitemark castings and report." Equally, this Petitioner's counsel only came on board in April 1998, just six months before trial, and perhaps because the only mention of a physical exam is on four lines of page 3 of the violation transcripts, defense counsel simply could have missed it. Regardless, the State having full knowledge of the medical report and having a waiver form to obtain the medical report had a duty to turn over to defense a copy of the medical report.

Lastly, the State contends, and this Court misconceived the fact that they claim that no one from the A.G.'s Office, despite obtaining a medical waiver form, even got a copy of the medical records (if you can believe that) and thus, since they was not in physical possession, did not violate their duties under discovery to turn over a copy. This exact same argument was used in State v. Wyche, and this Court disagreed and stated:

"The State exhorts the Court to adhere to the literal reading of the rule and require the prosecution to deliver only reports and results that are (1) known by the state to be in existence, (2) within the states custody and control, and (3) in writing. Because the prosecutor had no written report or results about the victim's blood-alcohol test within his possession, the state argues that he had no Rule 16 duty to disclose the .208 reading. We

decline to limit Rule 16 (a)(5) in this fashion.

There is no disputing that a blood-alcohol test was preformed on June 19, 1984 on Garcia and that it indicated a .208 concentration. In all likelihood some type of written report or record of the test was made in the normal course of hospital procedure. What became of that report is not of concern here. The key factor for this Court is the states knowledge that the .208 reading existed and that the state possessed this information prior to the doctor's taking the stand. Knowledge plus possession of the results in oral form was sufficient in our belief to trigger disclosure under Rule 16 (a)(5). To require the prosecution to produce written but not oral test results in its possession invites abuse."

This Petitioner's case is exactly the same as that of Wyche except that the State in this case had nearly four years of full knowledge of the medical reports while Wyche's counsel was put on notice of the blood-alcohol test in less than 24 hours.

Petitioner respectfully submits that because he has met his burden to show that the state had full knowledge of the medical report and deliberately withheld it from the defense, he is entitled to a new trial and moves this honorable court to be reheard in the interest of justice.

Dated: July 24 2012

Randy Anderson
Randy Anderson
P.O.Box # 8273
Cranston,R.I. 02920

CERTIFICATION

I, Randy Anderson hereby state that I have sent a true copy to the office of the Attorney General at150 South Main St. Providence Rhode Island 02903 on this the 24 day of July,2012.

C: Catherine Gibran
R.I. Public Defender.

Randy Anderson
Randy Anderson
P.O.Box # 8273
Cranston. R.I.02920