

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Fairfield County

Honorable Paul M. Burch, Circuit Court Judge

CURTIS LEE ELGIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001383

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err denying petitioner relief from his 2009 murder conviction based on after discovered evidence where the state's key witness Raymond Barnes told an investigator in 2015, several times, that he did not believe petitioner committed the murder and where there was no physical evidence tying petitioner to the murder at trial?

STATEMENT

In July 2005, a Fairfield County grand jury indicted petitioner for murder. App. 875. Petitioner's case was called to trial on July 6, 2009, before the Honorable Brooks P. Goldsmith and a jury. Gwendlyne Young Smalls (now the Honorable Gwendlyne Jones) represented petitioner. Douglas Barfield represented the state at trial. App. 1. The jury found petitioner guilty as indicted. App. 697. Judge Goldsmith sentenced petitioner to a term of fifty years' imprisonment. App. 702.

Petitioner filed an application for post-conviction relief (PCR) on May 31, 2012. App. 716. The state filed its return on January 23, 2013. App. 723. Subsequently, petitioner filed an amended application for PCR on January 22, 2019. App. 728. An evidentiary hearing was held before the Honorable Paul M. Burch. Charles Grose and Elizabeth Franklin-Best represented the petitioner. Samuel Key, assistant attorney general, and Lindsey McAllister, assistant attorney general, represented the state. App. 732.

On November 4, 2021, Judge Burch signed an order denying PCR. App. 854-73. The court held the statements by Raymond Barnes, over the course of all the recordings, were "entirely insufficient" to grant petitioner's request for relief as after discovered evidence of recantation. App. 866. The court found that petitioner failed to demonstrate there was a reasonable probability that Barnes' recantation would change the result at a new trial because the "alleged recantation" of Barnes' trial testimony was "unreliable and incredible." App. 866-67

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred denying petitioner relief from his 2009 murder conviction based on after discovered evidence where the state's key witness Raymond Barnes told an investigator in 2015, several times, that he did not believe petitioner committed the murder and where there was no physical evidence tying petitioner to the murder at trial.

Introduction

The decedent, Audre Belton was found dead in her home on February 15, 1993. App. 129, l. 24-130, l. 14. At the time there were no leads in the case and the physical evidence at the scene, one fingerprint and two palm prints did not match petitioner. App. 137, ll. 17-21; 226, l. 14-227, l. 4. A few months later a discarded gun was found nearby. App. 267, l. 20-274, l. 7. The gun was analyzed and determined to be the murder weapon in this case. The gun was purchased by Kenneth Haney, Sr. and his son. The Haney's bought the firearm from Jimmy Douglas in 1989. The gun was eventually returned to Douglas, maybe in 1990, and stored in Douglas 'father's office in a cabinet. App. 238-39. The son had, at some point, been employed by Douglas. App. 235, l. 10-236, l. 19. Petitioner had also been employed by Douglas at his furniture store. App. 234, ll. 11-21.

Petitioner was questioned by law enforcement a few months after the incident when he was found walking close to the decedent's home but was not arrested in connection with the incident until twelve years later. App. 328-30.

While incarcerated for an unrelated crime petitioner became cell mates with Raymond Barnes. Barnes was serving a federal sentence for drug charges and was transferred to Fairfield County detention center to provide information and leads on an unrelated case.

Barnes' Trial Testimony in 2009

Barnes testified at petitioner's 2009 trial. App. 441. Barnes told the jury that while he was being held in federal prison in South Carolina he became aware of another inmate that was bragging about an unrelated crime. Barnes was put in contact with Frasier Craig regarding that unrelated crime. App. 442-443. As a result, Barnes explained that in 1996, he was held for a time in Fairfield County detention center. App. 440. During the time he was held in Fairfield County he took "field trips" with Craig concerning the unrelated crime. App. 444.

Barnes met petitioner during his time in the detention center. App. 445. Barnes testified that at some point he was asked to wear a recording device to record conversations he had with petitioner while they were cellmates. However, ultimately the recordings were inaudible. App. 446. Barnes testified that while he and petitioner were cellmates petitioner told him details about a murder. App. 447.

Barnes told the jury that petitioner told him when the murder occurred, the name of the victim, and how she was killed. App. 448-49. Barnes said specifically that petitioner told him that the murder weapon "was a .22 based on a .32 frame," and that petitioner told him he stole the gun out of the furniture store where he worked. App. 450, ll. 1-14. Barnes also claimed petitioner told him that he had a key to the decedent's house because she had bought furniture from the store before and left a key so that it could be delivered. App. 451, ll. 1-8. Barnes testified that petitioner was attempting to rob decedent but that she came home and surprised him. App. 451. He said petitioner told him that he wore socks on his hands in order to not leave fingerprints at the scene. App. 451, ll. 15-22. Barnes also alleged that petitioner told him where and how many times he shot her and that the murder occurred in two rooms. App. 452. Barnes testified that petitioner told him that he turned the thermostat up in the home and that he disposed of the gun in the location

it was later found. App. 453-54.

On cross examination Barnes testified that although he was taken out of the detention center regularly by Craig he ate all of his meals inside the institution. App. 459-60. Barnes also maintained that he brought the information to Craig's attention and then he later wore a wire to record conversations that he would start with petitioner regarding the incident. App. 460-65.

Barnes' recantation in 2015

At petitioner's evidentiary hearing Peter Skidmore, a private investigator, working for PCR counsel testified that he met and interviewed Raymond Barnes in March and October of 2015. Barnes died not long after the interviews. App. 737, ll. 5-14. Skidmore testified, and the recording made of their interview corroborated, Barnes worked as a snitch for Frasier Craig. App. 739, ll. 6-8, Applicant's exhibit 2. Skidmore also testified that he met with the state's other key witness in petitioner's trial Lindsay Goins and took a deposition.¹ App. 742-45.

Frasier Craig testified that he initially met with Barnes regarding another case. App. 778. Craig said that he met with Barnes on multiple occasions before he got permission to move him to Fairfield to be more accessible. App. 779-80. Craig admitted that he took Barnes out of the detention center regularly to help in connection to another case. App. 794. Craig acknowledged that sometimes when they were working on the other case he would purchase fast food for Barnes. App. 781-82.

Craig testified that his brother worked at the detention center at this time but denied that he intentionally assigned Barnes to the same cell as petitioner. App. 780, ll. 18-23. Craig

¹ Goins was unavailable for the hearing as he lived out of state and the deposition was never admitted as an exhibit. It was discussed during the hearing that the parties would agree as to redactions and then submit as an exhibit but to my knowledge the deposition was not admitted. App. 743, l. 1-745, l. 13.

maintained that Barnes came to him with the information regarding petitioner in relation to this incident. App. 782, ll. 18-22. Craig said that he passed the information along to the solicitor in 1996 and the solicitor chose not to prosecute. App. 783.

In the multiple recordings made by Skidmore of his interviews with him, Barnes is very clear throughout that he never believed petitioner was involved in this incident. It was Barnes belief that petitioner wanted to impress him because Barnes was a big-time drug dealer and petitioner was trying to seem like a “big” man. Applicant’s exhibit 2.² In the initial recording it is difficult to tell how Barnes and Craig began talking about petitioner but in their second meeting Barnes is clear that Craig wanted him to talk to petitioner regarding this incident.

Barnes said in the recording that Craig believed petitioner had murdered a woman, but law enforcement had been unable to “put the pieces together.” Applicant’s exhibit 2, March 3, 2015 5:18pm minute 8.26-12; March 15, 2015 4:09pm minute 2.20-3. Barnes also said that petitioner did not have specific details about the incident and that he was not sure where he got the details about the murder weapon and about the thermostat in the home of the decedent. Applicant’s exhibit 2, March 15, 2015 4:09pm minute 7-9; Applicant’s exhibit 2, March 15, 2015 4:54pm minute 2-2.10. Barnes admitted that he might have talked petitioner into what he told him. Applicant’s exhibit 2, March 15, 2015 4:09pm minute 10-12; minute 20.05-20.30.

Discussion

The PCR court’s findings of fact are entitled to deference and will be upheld when there is any evidence of probative value to support them. *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d

² Applicant’s exhibit 2, recording of interviews between Investigator Skidmore and Raymond Barnes is on file with this Court. The exhibit contains interviews from March 3 and 15, 2015 that are separated in multiple thumbnails that can be differentiated by the time they were recorded.

538, 540 (2013). Questions of law, however, are reviewed *de novo*, and this Court will reverse when the PCR court's decision is controlled by an error of law. *Id.*

In *Hayden v. State*, our Supreme Court reviewed the criteria necessary to grant a new trial on newly discovered evidence. The Court explained:

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching.

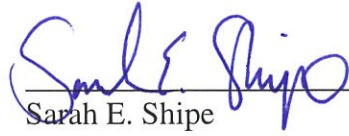
Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983).

The PCR court erred finding there was no reasonable probability that Barnes' recantation of his trial testimony would have changed the result at a new trial. Barnes was the state's key witness and there likely would not have been a conviction without his testimony. Barnes admitted petitioner did not give him any of the specific details that he testified to at trial. Those details were crucial in securing petitioner's conviction. There was no physical evidence tying petitioner to the murder only his alleged confession to Barnes and Goins, his cellmates at the time.

Furthermore, petitioner met every other prong of the test. It would have been impossible for Barnes' falsified trial testimony to have been discovered before or during trial. As previously stated, Barnes testimony was material to the issue of guilt or innocence because without the damning testimony that petitioner was bragging about this incident while incarcerated on an unrelated charge at trial the state likely could not have convicted petitioner. The recordings of Barnes' recantation of his trial testimony met the requirements for a new trial based on after discovered evidence as laid out in *Hayden*.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.



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This 13th day of June, 2022.