

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO FAIRFIELD COUNTY
Brooks P. Goldsmith, Trial Judge
Paul M. Burch, PCR Judge

Appellate Case No. 2021-001383

CURTIS LEE ELGIN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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The PCR court properly found the recantation testimony of Raymond Barnes would not change the outcome of a new trial when (1) Barnes only changed his statement after being coerced and led by a private investigator, making his recantation testimony unreliable and not credible, and (2) the crux of Barnes’s statement remained the same.....19

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QUESTION PRESENTED

Petitioner's Question

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

Respondent's Counterstatement of Question

Did the PCR court properly deny Petitioner relief based on its finding that the recantation testimony of Raymond Barnes would not change the outcome of a new trial when (1) Barnes only changed his statement after being coerced and led by a private investigator, making his recantation testimony unreliable and not credible, and (2) the crux of Barnes's statement remained the same?

STATEMENT OF THE CASE

Procedural History

Petitioner Curtin Lee Elgin Thompson is presently confined in the South Carolina Department of Corrections serving a fifty-year sentence. In July 2005, the Fairfield County Grand Jury indicted him for the murder of Audre Belton, which occurred February 15, 1993. On July 6-7, 2009, Petitioner proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Gwendyline Young Smalls, Esquire, represented Petitioner. Solicitor Doug Barfield and Assistant Solicitors Riley Maxwell and Sandra Hickman prosecuted the case. Petitioner was convicted as indicted, and the trial court sentenced him to fifty years' imprisonment.

Petitioner filed a direct appeal, which was perfected by Appellate Defender Elizabeth Franklin-Best. On appeal, Petitioner argued the trial court erred in failing to grant him a new trial after discovering a juror engaged in misconduct by discussing the case with the juror's mother. On May 16, 2012, the Court of Appeals issued an opinion affirming. See State v. Elgin, Op. No. 4974 (S.C. Ct. App. filed May 16, 2012). The remittitur was sent June 1, 2012.

On May 31, 2011, Petitioner filed this application for post-conviction relief (PCR). The State filed its return on January 23, 2013. On January 24, 2019, an evidentiary hearing was held before the Honorable Paul M. Burch. Charles Grose, Esquire, and Elizabeth Franklin-Best, Esquire, represented Petitioner, and Assistant Attorney Generals Lindsey McAllister and Samuel Key represented the State. On November 19, 2021, Judge Burch issued an order denying relief and dismissing the application.

Summary of Trial Testimony

Andre Belton (Victim) was shot in her home around February 8, 1993. Approximately one week later Victim's sister stopped by her home to check on Victim and discovered her body in the

back bedroom. (App. 92-94). Although investigators did not find any signs of forced entry, an outside screen to a window was on the ground. (App. 176-77). There were bullet holes in the hallway and a bedroom and blood throughout the apartment, including on a light switch, an electrical outlet, and an air vent; bloodstain patterns on the wall, doorframe, and doorjamb of a bedroom; and evidence of “dripping blood” on the baseboard. (App. 201, 207, 209, 212-13, 220-22). The thermostat was set at 52 degrees. (App. 207). Additionally, investigators noticed “drag marks” in blood in the bedroom where Victim was found, indicating her body “was drug from another location.” (App. 224). Investigators recovered fingerprints, but none matched Petitioner or any of the other initial suspects. (App. 190-91).

About four months later, police recovered a gun from behind a Uniroyal plant, which was about a five-minute walk from Victim’s home. (App. 270-75, 279-81). An expert in firearms examination testified bullet fragments recovered from Victim’s autopsy and a bullet recovered from Victim’s home were fired from the gun. (App. 372-74, 381-82). Police traced the gun to Kenneth Wayne Haney, Sr. and Kenneth Wayne Haney, Jr., who testified they purchased the gun from Jimmy Ray Douglas in January 1989. (App. 254-55, 257-62). However, Haney Jr. later returned the gun to Douglas on trade. (App. 255, 257-62).

Douglas testified he owned and operated Carolina Furniture, where Petitioner had worked around the time of the murder stocking items and making deliveries. (App. 232, 234-35). Douglas recalled Haney returning the gun; Douglas testified his father put the gun in his truck’s glove compartment. (App. 238-40). However, he stated his father lost the key to the glove compartment and no one had missed the gun. (App. 241). After investigators asked about the gun, Douglas opened the glove compartment and noticed it was missing. (App. 241-42). He acknowledged delivery drivers had access to his father’s truck and would drive it “from the back to the front each

night when [they] were closing up.” (R. 251-52).

Douglas testified Victim had purchased a kerosene heater from Carolina Furniture prior to her death, but Carolina Furniture did not deliver kerosene heaters and had not delivered anything to Victim’s home. (App. 243, 249-50). Douglas also averred Victim provided a different address than the address where her body was found. (App. 250).

Shortly after the gun was found, investigators encountered Petitioner walking down the road near Victim’s home and spoke to him. (App. 532-33). According to Investigator Reid Long, Petitioner relayed he did not know Victim although he knew who she was; Petitioner’s girlfriend lived nearby and Petitioner had seen her when he walked by. (App. 538). Petitioner denied ever going inside her home. (App. 540). Investigator Long testified that Petitioner said he had delivered furniture to Victim’s prior home. (App. 539). When asked about the gun, Petitioner recalled seeing it in the glove compartment of Douglas’s father’s truck but denied knowing where the key to the glove compartment was located. (App. 541-42).

Investigators did not develop any other leads until 1996, when Raymond Barnes was detained at the Winnsboro Detention Center with Petitioner. At Petitioner’s trial, Barnes testified he was incarcerated on federal charges and had been transferred to Fairfield County by Investigator Frazier Craig to obtain information on an unrelated case. (App. 440-43). He testified he did not know who Petitioner was when he first transferred to Winnsboro, and he had never heard of Victim. (App. 444-45).

Barnes testified he shared a cell with Petitioner and Lindsay Goins. He testified Petitioner confessed to murdering Victim, although Barnes did not believe Petitioner really did it. (App. 447-50). Barnes testified Petitioner told him he shot Victim with a “.22 based on a .32 frame” that he stole from the office of a furniture store. (App. 450). He stated Petitioner also told him Victim

had purchased furniture from that store and left a key. (App. 450-51). According to Barnes, Petitioner said he went to Victim's home to rob it, but Victim returned while he was there, and Petitioner "ran all around the house at her shooting her." (App. 451-52). Petitioner told Barnes he had socks on his hands, although Barnes testified he did not believe that. (App. 451). Barnes testified he did not believe Petitioner's story because "there's no way you can be in a town in a house shooting that many times and nobody going to hear you." (App. 452). Barnes stated Petitioner told him he adjusted the thermostat before leaving and threw "the gun behind a dumpster up by the Uniroyal Tire Company." (App. 453-54).

Barnes testified he attempted to record his conversations with Petitioner on a recording device that Investigator Craig gave him, but the recordings were "distorted" and inaudible. (App. 446, 463-64). He also testified he took "field trips" with Investigator Craig while he was detained in Winnsboro. (App. 444). Barnes stated he did not get a reduction in his federal sentence from working with Investigator Craig, he was released from his federal sentence in 2002, and he was a free man at the time of Petitioner's trial in 2009. (App. 440-41, 455).

On cross-examination, Barnes acknowledged Investigator Craig picked him up most days and took him to a substation for a few hours to discuss another case. (App. 458-59). Barnes testified he asked Investigator Craig about Victim's murder one day and whether it actually occurred, but Investigator Craig did not answer. (App. 460). When asked why he did not tell Investigator Craig about Petitioner's story until their third or fourth meeting, Barnes responded, "Because I didn't believe him." (App. 461). However, Barnes testified Petitioner "kept going over the details of it," and Barnes "kept asking him questions and he was answering the questions real good." (App. 461). Barnes maintained he never really believed Petitioner; he explained many inmates in prison want to appear to be "big boys." (App. 477-78).

Goins testified and recalled sharing a cell with Barnes and Petitioner at the Winnsboro Detention Center in 1996.¹ (App. 483-84). He recalled overhearing Petitioner tell Barnes about Victim's murder. (App. 485-86). He also recalled Petitioner admitting he killed Victim. (App. 487). Goins testified Petitioner said he entered the home through a screen intending to steal money, but Victim returned home while he was there. (App. 487-88). Petitioner told Goins that Victim tried to run but he ran after her and shot her four or five times with a ".22 on a .32 frame." (App. 488-90). According to Goins, Petitioner said he got the gun from either the truck or the office of a furniture store where he worked. (App. 490-91). Goins also recalled Petitioner saying he took a key from the office, although Goins wasn't sure what the key was for. (App. 490, 503). Goins testified Petitioner said he threw the gun behind the Uniroyal plant. (App. 492). On cross-examination, Goins explained most of Petitioner's conversations were directed at Barnes, and Goins did not hear everything that was said. (App. 498, 503-04). When asked why he did not report this to investigators in 1996, Goins replied, "Because I don't know whether he's telling the truth or whether he's for real or not, I don't know." (App. 506).

Robert Green, an inmate, testified he was in Lee Correctional Facility with Petitioner in 2007. (App. 512-14). He acknowledged writing a letter to the solicitor in February 2007 indicating Petitioner said he killed a woman. (App. 514, 520). Green testified he overheard Petitioner tell his roommate "about some killing." (App. 518-19). At trial, however, Green denied that Petitioner told him he murdered Victim, although he admitted Petitioner once told him "he's done killed one time, he will kill again." (App. 519-20). Likewise, Virgil Pauling admitted he told investigators in 2006 that he was incarcerated with Petitioner and Petitioner admitted to killing Victim. (App. 563-66). However, Pauling testified at trial that his statement was untrue. (App. 566).

¹ Goins had also been released from incarceration by the time of Petitioner's trial. (App. 482).

Summary of PCR Testimony

During the PCR hearing, private investigator Peter Skidmore testified he was hired by PCR counsel to interview Barnes, and he interviewed Barnes twice in March 2015 and once in October 2015.² (App. 736-37, 746). Skidmore acknowledged Barnes was very concerned about perjury. (App. 738). He stated Barnes “made it clear that he did receive benefits” from Investigator Craig. (App. 740). Skidmore recorded his interviews with Barnes, and the recordings were played for the PCR court. (App. 740-41).

In the first recording, which was made without Barnes’s knowledge on March 3, 2015, Skidmore approached Barnes and asked whether Investigator Craig “put [him] up to anything.” (150303_003, 3:30). Barnes replied, “No. . . . [T]rying to put me up to saying something that wasn’t right? Nah, uh-huh. Frazier Craig’s a good guy, man. If you want to talk about Frazier Craig, I’m the wrong one. He’s a real good guy.” Regarding Petitioner, Barnes stated,

[Petitioner] was a good guy. . . . He was my cellmate, and I never thought that **all of a sudden he just opened up**. . . . He had went to work for that man who owned the furniture company, Mr. Douglas, and he said the lady ordered a bedroom suit, and he was just talking, and he thought I was a big kingpin who came through, he didn’t know I was doing the time.

(8:52). Barnes further stated,

Then he told me he went to work for Mr. Douglas, moving furniture, said this lady left a key, left for them to take furniture in the house, and **he made a key of the lady’s house, went back in there**, pretty lady . . . , he went back in there, **raped her and killed her**.

(24:11). Barnes stated Petitioner “just had to get it off his chest,” to which Skidmore replied, “That just doesn’t make sense.” (23:37). In response, Barnes explained that Petitioner “wanted to feel like a big boy.” Skidmore then began to discredit Barnes’s story and questioned how Barnes knew

² Barnes was deceased at the time of the PCR hearing. (App. 737).

Petitioner was telling the truth. (24:55).

Barnes stated he was placed in Winnsboro Detention Center after giving investigators information about an unrelated murder. (29:00, 31:00). He acknowledged Investigator Craig would pick him up, and Investigator Craig bought him Kentucky Fried Chicken a couple of times and meat and cheese for Christmas. (32:28, 34:15, 35:50). Skidmore attempted to insinuate that Barnes would say whatever Investigator Craig wanted to hear in exchange for Kentucky Fried Chicken and cigarettes. (34:41). Barnes replied, “Well I already got my smokes. They sell smokes in there. I always had money, I could buy what I want.” Although he acknowledged that Kentucky Fried Chicken was a treat, he stated, “You think I’m gonna sell my soul for a piece of chicken? No. If he could have did something for me, I would actually go home after this was over and cut my time. He couldn’t do that.” (38:05). Barnes explained he had already been sentenced in federal prison, and he knew that Investigator Craig—a state investigator—did not have any control over his federal sentence. (37:05). Barnes acknowledged investigators told him they would pay for his gas and lodging if he went to Winnsboro to testify in Petitioner’s trial, but Barnes never received any reimbursement. (42:00).

Barnes stated Investigator Craig gave him a microphone to record Petitioner’s statements, and Petitioner confessed on that recording, although Barnes was unsure why it wasn’t used in trial. (41:33). Thereafter, the following exchange occurred:

Skidmore: It’s hard for me to understand why anybody

Barnes: They said look, Elgin in your cell. He said we willing to talk to you about, uh, putting a microphone on you. I said I can get him to talk, if that’s what you want. I can get him to talk. All I got to do is tell him he ain’t tough, you know, all you got to do is tell him you ain’t got no heart. . . . He goes man, I done did a lot of things. I said, oh sh**, you ain’t did nothing.

Skidmore: So they wanted you to go talk to him?

Barnes: Yeah. And I talked to him. **And he started talking. And he talked and tell me about that pretty lady he done killed.** I said what? Man, I'm telling you man. I said ok. And then he said he had a gun, he threwed the gun behind the dumpster. . . . The boy, he said his own thing, what, he got about 50 years out there didn't he?

Skidmore: He got life.³ He's gonna die between those walls. And he's saying he didn't do it.

Barnes: He said he didn't do it?

Skidmore: Yeah. And so that's where, there's no eyewitnesses, nothing else, all there is is y'all's conversation, and then I think another person's conversation whose now recanted.⁴ So, my thing is, what, twenty-something years ago, if it was me in your shoes, I'd say whatever Frazier Craig wanted me to say

Barnes: **No, I wouldn't say what Frazier want me to say because—**

Skidmore: **What he needed me to say.**

Barnes: **No, not needed me to say nothing because I'm not gonna put a man in prison, uh, that didn't say what he said.**

(43:50). Thereafter, Skidmore again insinuated that Investigator Craig put Barnes up to it and Barnes's story did not make sense. (46:30). At 47:10 minutes, the following exchange occurred:

Skidmore: And if there's any concern you'd be in trouble, I don't think so because you had somebody offer you basically a nice six months

Barnes: Yeah, if they gave me some time off. But they didn't give me some time off.

Skidmore: You and I both know they always make empty promises. . . .

³ Although Skidmore informed Barnes throughout this first interview that Petitioner received a life sentence, Petitioner actually received a fifty-year sentence.

⁴ At the PCR hearing, Petitioner attempted to enter the transcript of a deposition from Goins; the State objected, indicating the parties needed to redact certain testimony before it was admitted. However, the transcript was never entered into evidence and was not before the PCR court.

Barnes: I never got paid. I paid for my hotel—

Skidmore: But they told you they were gonna pay for your hotel. . . .

Barnes: . . . Yeah, my expenses. . . .

Skidmore: Did Frazier Craig have anything on you? I mean, what is your motivation? You're already out, and you said that you didn't write any letters to Frazier Craig, you never gave a written statement to Frazier Craig. So it wasn't until a year before the trial happened that Frazier Craig said hey, I need that favor.

Barnes: No, he didn't tell me I need that favor. He said if we subpoena you, would you be willing to come to South Carolina.

Barnes, throughout this first interview, consistently maintained that Petitioner told him he killed “the lady,” although he averred Petitioner was only trying to impress him. (53:57; 58:30; 1:00:23).

At 55:50 minutes, the following exchange occurred:

Skidmore: I don't think he did it. I think someone else had some reason to do it and some motive.

Barnes: You know what, I don't think he did it either. I think he was just trying to make himself be a big boy in front of me. But I don't want to be the one who nailed his coffin shut, but he was trying to be a big boy and get into the drug game.

Later, Barnes stated, “If we can get him a new trial, I'll be willing to go back and testify for him, because I believe that he was just trying to be a big boy in front of me.” (57:49). At approximately

58:30 minutes, Barnes said:

I told him, you ain't got no heart in this country-a** town, you ain't got no heart, . . . He said, “I done did that.” I said tell me about it. And he trying to prove to me that he's not lying. **Like I told them when I got on the stand, I'm only saying what he told me. I ain't gonna sell that man down the river for a few dollars. But I'll tell the truth of what was laid to me.**

Skidmore asked, “How many times did [Petitioner] tell you that he did it?” Barnes replied, “We talked about it a lot.” (1:00:20). Skidmore then asked Barnes whether it was odd that Petitioner

told him about the murder. (1:00:50). Barnes replied,

Yeah, because I believe he was trying to prove himself to me. I didn't believe half the sh** he said. . . . I didn't believe half the stuff he said, but when I ran it by Frazier Craig, he said that's the way it happened. . . . And the only person who knows that is the one who did it. So he came out with a lot of good stuff that sealed his own case because he said some things that nobody else knew but him.

(1:01:10). Critically, the following exchange occurred near the end of the first recording:

Skidmore: I think you're a righteous man to where if someone's in prison for life and they shouldn't belong there, then I think that you would try to help them out.

Barnes: I will.

Skidmore: Ok, so, you and I talking, if he needs to step out, so that nobody's privy to, or a witness—⁵

Barnes: No, my thing is this, I'm not gonna say nothing that's going to jeopardize me—

Skidmore: I know that. But what if I can protect you?

Barnes: If you can protect me, uh, and I can say [laughs] that they paid me to get on that stand, I'll help get him out.

Skidmore: All right, can I have him excuse himself real quick? Can you just stand in that hallway?

(1:21:20). Thereafter, Skidmore speaks quietly to Barnes as follows:

Skidmore: All right, I could be able to protect you if I knew what to be able to say so that the lawyer could know what they want me to protect you from. Does that make sense? **Now, I've got a question, hold on, don't say anything, don't answer this question. Have you ever lied on the stand?**

Barnes: **No.**

Skidmore: **Don't answer!** Ok, have you ever lied on the stand? Ok. Don't answer. Om, the reason I asked that, is where our conversation, say, Pete Skidmore's a liar.

⁵ There was a second person that accompanied Skidmore on this interview.

Barnes: Say what?

Skidmore: You could say I'm a liar.

Barnes: Yeah—

Skidmore: [inaudible] you and me talking—

Barnes: I could say I lied but I didn't know he was gonna get no life sentence, you know, and I feel bad about the fact that I done cost that man his life.

Skidmore: But . . . if you can help—so you're saying you lied on the stand, and that if you could help me fix this, you're willing to help—

Barnes: Yep.

Skidmore: —but you want to be protected.

Barnes: Yes.

Skidmore: All right, that's what I need to do . . . because I think you can do something very special, because between you and I, I think Frazier Craig pressured you into this, and that he wanted you to say certain things, and I don't know this part, but I think Frazier Craig might have something on you—

Barnes: No

Skidmore: Somebody has something on you where he's trying to scare you.

Barnes: No, he didn't have nothing on me. I was doing all the time that I could do. And all my slate was clean.

(1:22:35). Toward the end of the recording, Skidmore tells Barnes he has a recorder outside and asks if Barnes would be willing to make a recorded statement. (1:26:50). Barnes agrees, explaining,

My thing is this. I'll help that man as much as I can. . . . What can I do to help him get out? Uh, for them to come ten years after the fact, and then try that man, uh, I don't believe the man did it, but

they never asked me, “Do you believe he did that?” I say no, I don’t believe he did it because he was only trying to prove to me that he was a big boy. He didn’t do that.

(1:27:22).

In the second recording taken on March 3, 2015, Barnes reiterated he was placed in Winnsboro to try to obtain information about an unrelated murder. (150303_005, 0:50, 3:05). He acknowledged Investigator Craig would pick him up from the detention center and agreed he received “special privileges” such as visiting his family at the substation and receiving Kentucky Fried Chicken. (1:28). After describing how Petitioner opened up to him about the murder, Barnes was asked, “Did you know about his charges before you enticed him?” (6:40). Critically, Barnes replied, “No, because at the time his charge was a drug charge, he could have did three months and then been out.” At the end of the recording, Barnes maintained he did not like that Petitioner received a life sentence. (12:20). When asked what he would change, he replied, “I would change it all, that the man never said nothing, other than what they got on that tape recorder. If they can’t decipher what’s on that tape, it’s on them.” During a third recording taken that same day, Barnes stated, **“I can’t be charged with perjury because the only thing I said on the stand is what he said to me.”** (150303_006, 0:23).

Skidmore returned on March 15, 2015, to interview Barnes again. (150315_001). In the first recording from that day, Barnes again stated he was placed in Winnsboro for an unrelated case, and Investigator Craig did not approach him about Petitioner’s case. (1:18). When asked whether he previously told Skidmore that Investigator Craig told him certain information about the case, Barnes replied, “The only thing that was told to me by Frazier Craig was that he believed Curtis Elgin had something to do with it.” (6:00). When asked, “Who told you where the gun was?”, Barnes replied, “I don’t remember who told me. I don’t remember whether it was Curtis

or Frazier.” (6:30). When asked whether Petitioner provided details about the murder, Barnes replied,

Not specific details because I don’t even know how the person was killed. I don’t know whether they was stabbed or whether they was shot or what. . . . **But I know this lady was supposed to be dating Mr. Douglas’s son. . . . Curtis Elgin told me that.** He had told me he had worked for Mr. Douglas and . . . I remembered that part. . . . I know he had told me Mr. Douglas’s son was dating this lady.

(7:12). Critically, Barnes stated, “My belief at the time was that [Petitioner] was telling me the truth, but then I went back over the situation, I might have talked him into saying that” (9:53). He maintained Petitioner told him about this murder to prove “he was a big boy.” (10:26). Barnes denied receiving special privileges but admitted Investigator Craig bought him Kentucky Fried Chicken once or twice, took him to the substation 2-3 times per week, and gave him meat and cheese at Christmas. (12:40, 15:20). He also stated his sister visited him once at the substation, although she could have visited him at the detention center. (17:00, 27:50).

During a second interview on March 15, 2015, Skidmore asked Barnes whether Investigator Craig or any of the other investigators told him any details about the crime; Barnes replied, “No.” (150315_002, 0:38). At 25:54 minutes, the following exchange occurred:

Skidmore: The only details that you got from the murder was from Frazier Craig?

Barnes: **No, uh-huh, the details I got from the murder was from Curtis Elgin.**

Skidmore: What were those details?

Barnes: It was on the tape; I don’t remember. It was just that something had happened to this lady and that was it.

The second interview ended with the following exchange:

Skidmore: Anything else that you’d be able to correct?

Barnes: I don't remember all I said. Whatever I said it was what he had told me, and like I said it was ten years after the fact, and I hadn't even calculated it. If I had known it was ten years later, I'd be wanting to know why it took them ten years to get me. . . .

(39:25)

In the final "recanting" interview, which was recorded October 15, 2015, Barnes recanted portions of his trial testimony by saying (1) Investigator Craig told him where the gun was found, (2) Investigator Craig told him the details of the murder and placed him in the cell with Petitioner to obtain information, (3) Barnes led Petitioner into confessing to the murder, (4) Petitioner did not tell Barnes that he put socks on his hands, (5) Petitioner did not tell Barnes he adjusted the thermostat, and (6) Investigator Craig told him what type of gun was used. (Elgin Curtis – Raymond Barnes recording (October 2015)). However, at portions of the interview, Barnes maintained that Petitioner told him about the murder. For example, the following exchange occurred at 2:14 minutes:

Skidmore: You were asked at the original trial . . . how Elgin got into the house and you said that Elgin said he had a key and that he got the key because the victim had bought some furniture from the store and the key was left up there. Did Curtis Elgin tell you that?

Barnes: **Curtis Elgin told me that.**

Skidmore: **Who told you that?**

Barnes: **Curtis Elgin told me that.**

Skidmore: Curtis Elgin told you that? About the key? . . . Ok, what did he say about the key?

Barnes: I asked him how he got in the house and he said the lady left her key there.

Likewise, at 6:40 minutes, the following exchange occurred:

Barnes: I led Curtis Elgin on those answers because I believed, I believed that he wanted to show me he was a big boy . . . because I had lied to him that I come through there to sell six kilos of cocaine

and I was looking for some people to distribute some cocaine in that area, and I was trying to prove to him that he ain't big enough man to get the job, he was trying to show me that he could do it.

Skidmore: What did you ask him about that?

Barnes: I asked him then, you ain't never killed nobody before? And I said what about that lady, . . . that light-skinned lady? **And then he went to talking.**

Petitioner again denied receiving special perks or benefits, although he acknowledged (1) Investigator Craig would pick him up and take him to the substation, (2) Investigator Craig allowed him to visit his sister at the substation, (3) Investigator Craig bought him Kentucky Fried Chicken, (4) Investigator Craig said he would be compensated his expenses for testifying in Petitioner's trial, and (5) Investigator Craig gave Barnes cheese and crackers for Christmas. Notably, toward the end of the interview, Barnes stated, "My belief is if you get up on that stand and deliberately tell a lie, then you can be charged with perjury. **But at the time I didn't think I was lying.**" (11:42).

The PCR court denied relief, finding the October 2015 recording, taken alone, was misleading, and the recordings together indicated Barnes did not recant his trial testimony. (App. 865). The Court reasoned that in the March recordings, "Barnes repeatedly affirmed his trial testimony that [Petitioner] had confessed to Belton's murder; denied being pressured by law enforcement to fabricate testimony; and denied receiving any special treatment in exchange for his cooperation or testimony." (App. 865). The Court found "Barnes only began to change his statements several months later, during the October interview, after Skidmore implied he knew with certainty [that Petitioner] had been wrongfully convicted" and "offered to 'protect' Barnes from any repercussions of recanting his testimony." (App. 865). The Court further found Barnes offered the recantation testimony only after "Skidmore exerted undue influence and inappropriate

pressure to convince Barnes to change his story,” and the recantation testimony was thus so “wholly incredible” that it was not reasonably likely it would change the result of a new trial. (App. 867-68). Finally, the Court found Barnes repeatedly denied receiving special treatment, and any “special treatment” of Barnes did not constitute newly discovered evidence. (App. 868-71).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court properly found the recantation testimony of Raymond Barnes would not change the outcome of a new trial when (1) Barnes only changed his statement after being coerced and led by a private investigator, making his recantation testimony unreliable and not credible, and (2) the crux of Barnes’s statement remained the same.

Petitioner asserts the PCR court erred in finding no reasonable probability that Barnes’ recantation of his trial testimony would change the result of a new trial because (1) Barnes was a key witness for the State, (2) Barnes admitted Petitioner did not give him any of the specific details he testified to at trial, and (3) no physical evidence tied Petitioner to the murder. Petitioner further contends the evidence met every other prong of the Hayden test because it would have been impossible to discover Barnes’ falsified evidence before or during trial. However, the PCR court properly found the recantation testimony of Barnes would not change the outcome of a new trial when (1) Barnes only changed his statement after being coerced and led by a private investigator, making his recantation testimony unreliable and not credible, and (2) the crux of Barnes’s statement remained the same.

To obtain a new trial based on after-discovered evidence, a party must show 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 credibility of newly-discovered evidence is for the trial court to determine.” State v.

Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011). “Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.” Id.

A. Barnes only changed his statement after being led and coerced by a private investigator, making his recantation testimony unreliable and not credible.

The PCR Court—which had the ability to assess the demeanor and credibility of Skidmore at the PCR hearing—properly found Barnes offered the recantation testimony only after “Skidmore exerted undue influence and inappropriate pressure to convince Barnes to change his story.” (App. 867-68). This Court should defer to the PCR court’s finding on this issue. See Harris, 391 S.C. at 545, 706 S.E.2d at 529 (“The credibility of newly-discovered evidence is for the trial court to determine.”).

It is notable that when Skidmore first approached Barnes, Barnes denied that Investigator Craig “put [him] up to anything.” (150303_003, 3:30). It is also notable that in that first recording, Barnes stated Petitioner “all of a sudden . . . just opened up.” Skidmore began to question Barnes’s story by saying, “That just doesn’t make sense,” to which Barnes explained that Petitioner “wanted to feel like a big boy.” (23:37). Several portions of this first interview involve Skidmore challenging Barnes’s story that Petitioner confessed to the murder. (24:55, 34:41, 43:50, 46:30). After Barnes acknowledged he did not believe Petitioner’s story, Skidmore asked Barnes if he would help Petitioner if Skidmore could protect him. (55:50, 1:01:10, 1:21:20). Barnes ultimately agreed, stated, “If you can protect me, uh, and I can say [laughs] that they paid me to get on that stand, I’ll help him get out.” (1:21:20). Even after agreeing to help, Barnes (1) denied that he had ever lied on the stand and (2) maintained that “the only thing [Barnes] said on that stand is what he said to me.” (1:22:35; 150303_006, 0:23).

The State submits the private investigator continued to lead and coerce Barnes in the remaining interviews. Although the State has attempted to highlight some examples of leading and coercion by the investigator in its summary of the PCR testimony, the State submits the Court should listen to all of the recordings in their entirety. By doing so, the State submits the Court will see the subtle influence Skidmore exerted over Barnes that ultimately led Barnes to recant portions of his trial testimony. Viewed in context and as a whole, the recantation testimony was so unreliable and incredible that it was not reasonably likely it would change the result of a new trial. See Harris, 391 S.C. at 545, 706 S.E.2d at 529 (“Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial.”). Thus, the PCR court properly denied relief.

B. The crux of Barnes’s statement remained the same.

The State acknowledges Barnes ultimately recanted some portions of his trial testimony. However, even after agreeing to help Petitioner, Barnes consistently (1) denied receiving special favors in exchange for false testimony and (2) indicated Petitioner told him about the murder.

Throughout the interviews, Skidmore insinuated that Barnes offered false testimony due to favors from Investigator Craig. In response, Barnes consistently denied receiving special favors in exchange for testimony. For example, after Skidmore insinuated that Barnes told Investigator Craig what he wanted to hear in exchange for Kentucky Fried Chicken, Barnes replied, “You think I’m gonna sell my soul for a piece of chicken? No. If he could have did something for me, I would actually go home after this was over and cut my time. He couldn’t do that.” (150303_003, 38:05). Barnes maintained he would not say what Investigator Craig “wanted” or “needed” him to say because Barnes would not “put a man in prison . . . that didn’t say what he said.” (43:50).

During the March 15, 2015 interview, Barnes again denied receiving special privileges, although he admitted Investigator Craig bought him Kentucky Fried Chicken once or twice, took him to the substation 2-3 times per week, and gave him meat and cheese at Christmas. (150315_001, 12:40, 15:20). He also stated his sister visited him once at the substation, although she could have visited him at the detention center. (17:00, 27:50).

In the final October 2015 interview, Barnes again denied receiving special perks or benefits, although—when led by Skidmore—he admitted (1) Investigator Craig would pick him up and take him to the substation, (2) Investigator Craig allowed him to visit his sister at the substation, (3) Investigator Craig bought him Kentucky Fried Chicken, (4) Investigator Craig said he would be compensated his expenses for testifying in Petitioner’s trial, and (5) Investigator Craig gave Barnes cheese and crackers for Christmas.

In addition to consistently maintaining he did not receive special favors from Investigator Craig in exchange for false testimony, Barnes consistently acknowledged Petitioner told him he committed the murder. For example, during the very first interview, Barnes stated Petitioner “just opened up” and told him he killed Victim. (150303_003 8:52, 24:11). When discussing wearing a microphone for Investigator Craig, Barnes stated, “I talked to [Petitioner]. And he started talking. And he talked and tell me about that pretty lady he done killed.” (43:50). At 55:50 minutes Barnes agreed with Skidmore that he did not believe Petitioner committed the murder but continued, “I think he was just trying to make himself a big boy in front of me.” The only implication from this statement is that Petitioner did in fact tell Barnes he committed the murder, regardless of whether Barnes believed he did it.⁶ Later, Barnes said, “Like I told them when I got on the stand, I’m only saying what he told me. I ain’t gonna sell that man down the river for a few dollars. But I’ll tell

⁶ Barnes testified during Petitioner’s trial that he did not believe Petitioner committed the murder.

the truth of what was laid to me.” (58:30). During a third recording taken March 3, 2015, Barnes stated, “I can’t be charged with perjury because the only thing I said on the stand is what he said to me.” (150303_006, 0:23).

On March 15, 2015, Barnes continued to maintain that Petitioner told him about the murder. He stated, “The only thing that was told to me by Frazier Craig was that he believed [Petitioner] had something to do with it.” (150303_006, 6:00). He also stated Petitioner told him that Victim was dating Douglas’s son. (7:12). Later that day, when Skidmore insinuated that Barnes learned the details of the murder from Investigator Craig, Barnes replied, “No, uh-huh, the details I got from the murder was from Curtis Elgin.” (150315_002, 25:54).

Even in the final “recanting” interview, Barnes made statements that indicated Petitioner told him about the murder. For example, when asked who told him Petitioner entered the house using Victim’s key, Barnes replied, “Curtis Elgin told me that.” (Oct. 2015, 2:14). Later, when discussing how he “led” Petitioner to confess to the murder, Barnes explained, “I asked him then, you ain’t never killed nobody before? And I said what about that lady . . . that light-skinned lady? **And then he went to talking.**” (6:40). At the end of that interview, Barnes stated, “My belief is if you get up on that stand and deliberately tell a lie, then you can be charged with perjury. **But at the time I didn’t think I was lying.**” (11:42). Taken together and in context, Barnes never recanted the most critical portion of his trial testimony—that Petitioner told him he committed the murder. Although Barnes recanted other portions of his testimony due to his stated desire to help Petitioner, the crux of his testimony—that he did not receive special benefits in exchange for his testimony and that Petitioner told him he committed the murder—remained consistent throughout. Thus, the PCR court properly denied Petitioner relief.

CONCLUSION

Based on the foregoing, this Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully Submitted,

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