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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CHARLES BRIDGES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000977

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner's Background

Petitioner Charles Bridges was first removed from the custody of his biological mother and co-defendant, Dawn Wilkins, at fifteen-months-old due to domestic violence, neglect, and abuse in the home. His older sister was also removed from the home at that time. For the next thirteen months, both children were fostered by Everette and Kathy Bridges. Petitioner and his sister were returned to the custody of Wilkins just after Petitioner turned two years old. Thirteen months later, the children were again removed from the custody of Wilkins when it was discovered that Petitioner's sister had been sexually abused by different men. Although he could not verbalize it due to his age, counselors firmly believed that Petitioner was sexually abused. Mrs. Bridges believed that Wilkins herself was responsible for the molestation of Petitioner. App. 111, ll. 7-21. Petitioner was eventually adopted by Mr. and Mrs. Bridges. App. 68, ll. 19-21.

Petitioner attended school through the eighth grade. App. 100, ll. 24-25. Throughout his education, he was taught in special education classes due to emotional disability. App. 155. At a young age, two and fourteen-years-old respectively, Petitioner was introduced to alcohol and marijuana. At seventeen-years-old, he began smoking methamphetamine and became addicted. He was found to have a problematic pattern of methamphetamine use that led to clinically significant impairment. Petitioner's biological parents both had a history of alcohol, methamphetamine, and crack cocaine use. App. 157-158.

Over the course of his youth, Petitioner received various mental health diagnoses to include unspecified disruptive, impulse-control, conduct disorder, ADHD, intermittent explosive disorder, PTSD, oppositional defiant disorder, and various substance abuse disorders. From

2003 until 2013, he received treatment for diagnoses including conduct disorder, ADHD, alcohol use disorder, child sexual abuse (suspected), and child neglect. From May 23 to August 4, 2016, he was hospitalized and treated for various substance use disorders and conduct disorder following an incident where he brought drug paraphilia and a weapon onto school property. App. 155-156; App. 159. During the competency to stand trial evaluation that was ordered by the circuit court in the present case, Petitioner was diagnosed with antisocial personality disorder and stimulant use disorder. App. 160.

Shortly after turning seventeen in December of 2016, Petitioner reconnected with Wilkins[1] for the first time through his older sister. For six weeks, he lived with Wilkins and Gary Stone in Stone's mobile home. During that time, Petitioner witnessed domestic disputes between Wilkins and Stone and was physically assaulted by Stone himself. After being struck by Stone, Petitioner moved back in with his adoptive parents. When he went to collect his belongings from Stone's home, Stone struck him again and told him that he could not have his belongings back. Mrs. Bridges observed marks on Petitioner after the incident and texted Wilkins to not contact Petitioner anymore. The contact between Wilkins and Petitioner ceased until February 3, 2017, when Wilkins called Petitioner asking him to come get her because Stone had threatened her life. App. 112, l. 4-App. 114, l. 2.

The Investigation

On November 9, 2017, the Cherokee County Sheriff's Department received information from Richard Smith about the possible murder of his neighbor, Gary Stone. Based on the information Smith provided, officers obtained and executed a search warrant for Stone's mobile home. Underneath Stone's mobile home, officers located several containers. Discovered within

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1 Wilkins's parental rights were terminated by the family court when Petitioner was eighteen months old. App. 212, ll. 23-24.

the containers were the dismembered head, legs, feet, and arms of an adult, white male. The torso of an adult, white male was found in a trashcan behind the trailer. The internal organs from the torso were found in suitcase under the trailer. App. 108, l. 21-App. 109, l. 16.

The body parts were determined to be those of Gary Stone. An autopsy was performed by Dr. Janice Ross in Newberry. The manner of death was found to be exsanguination and perforation of the lungs due to stab wounds of the chest and back. Asphyxia by choke hold was found to be a "significant condition contributing to death" but was not the cause of death. App. 109, l. 19-App. 110, l. 3; App. 152.

Petitioner and Wilkins were questioned by police about the murder and dismemberment of Stone on February 9, 2017. Over the course of the day, both Petitioner and Wilkins gave multiple statements to police about the incident and their involvement. Both parties stated that Wilkins called Petitioner for help because Stone had threatened her with a knife and a gun. While on the phone with Wilkins, Petitioner overheard Stone threaten to kill him and Wilkins if he came over to Stone's home. Petitioner, who did not have a car or driver's license, arranged for a ride to Stone's home so he could get his mother. Shortly after he arrived, Stone confronted Petitioner, punching him in the face. The two began to fight. Stone pinned Petitioner to the ground and pulled out a switch blade to stab Petitioner, at which point Petitioner placed Stone in a "sleeper hold." Once Stone was subdued, Petitioner went inside the trailer with Wilkins. They claimed that a short time later, Stone entered the trailer, retrieved some personal items, and left. They claimed that they had not seen Stone since the fight. App. 130-131; App. 144-147.

Petitioner was questioned a second time on February 9, 2017. In his second statement he repeated the same initial narrative but stated that after Stone was subdued in a chokehold, he stabbed Stone in the back near his spine to make sure he would not get back up. Petitioner stated

he had stabbed Stone to paralyze him but not to kill him. When he went back to check on Stone, approximately thirty to sixty minutes later, he found him dead. Petitioner stated he panicked, so he dismembered Stone and attempted to get rid of the body parts by pouring boric acid on them. He claimed that, while Wilkins was present, she did not have anything to do with the murder or dismemberment of Stone. App. 132-135.

On April 26, 2018, Petitioner gave a third statement to police. The initial narrative that Petitioner had repeated twice in February remained the same. Petitioner wrote that while in the fight with Stone, he ended up on the ground, and Stone attempted to stab him. He stated that while he was pinned underneath Stone, he saw Wilkins's hands come down in a stabbing motion and that he was then able to place Stone in a sleeper hold or chokehold to subdue him. Once Stone was subdued, Petitioner noticed blood on his jeans and a wound to Stone's lower back. He did not understand how it had occurred at the time because he was high on methamphetamine during the incident. A short time later, he checked Stone's pulse and realized that he was dead. According to Petitioner, Wilkins instructed him that they had to get rid of the body and told him to dismember Stone and hide the body parts under the trailer. Petitioner wrote that he had not slept for a week at that point, because he had been using methamphetamine. When the police came to perform a welfare check, they spoke with Wilkins and not Petitioner. Petitioner admitted to telling Richard Smith a version of what had occurred. He stated he told Smith that he had killed Stone hoping it would force Wilkins into accepting responsibility. He averred that he was only guilty of dismembering Stone, that the prior statements were false, and that he had only confessed to the murder to keep Wilkins out of trouble. App. 139-143

In Wilkins's second statement, given on November 16, 2017, she denied all involvement in the murder and dismemberment of Stone. Her narrative about being threatened by Stone and

calling Petitioner for help did not change. She stated that she saw the two fighting and saw Petitioner use a chokehold on Stone. She also stated that she went inside during the middle of the fight and starting drinking. Wilkins mentioned that there was another young white male at the trailer during the fight but stated she did not know who he was. She claimed that when they discovered Stone dead in the yard, it was Petitioner's idea to dismember the body and hide it beneath the trailer. She only admitted to helping Petitioner move Stone's body after they discovered him dead prior to dismembering him. App. 148-151. Petitioner and Wilkins were charged with the murder of Stone. App. 80, ll. 9-12. The Cherokee County grand jury indicted Petitioner for murder during its March 2018 term. App. 127-128

Pre-trial Motions and Plea

On December 2, 2019, Petitioner appeared before the Honorable J. Derham Cole with his appointed attorney, Michael Morin. Solicitor Barry Barnette prosecuted the case. App. 1. The parties held a hearing pursuant to Jackson v. Denno[2] to determine the admissibility of Petitioner's statements to police. Detectives testified that Petitioner was read and waived Miranda[3] warnings, was not under the influence of drugs or alcohol, and was not coerced into making a statement. App. 13, l. 17-App. 15, l. 22; App. 27, l. 18-App. 30, l. 20. Detectives confirmed Petitioner was taken into custody at three in the afternoon and gave his second statement between 9:05 pm and 10:51 pm. App 132. During that time Petitioner was offered some candy. That was the only food he was given while in police custody. App. 34, ll. 7-20. Detectives also testified that Petitioner signed the second waiver form with two names, "Charles Bridges" and "Charles Keiser." App. 28, ll. 19-24; App. 132. None of the statements given by

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2 378 U.S. 368 (1964)

3 384 U.S. 436 (1966)

Petitioner were audio or video recorded. App. 37, ll. 18-22. Both statements taken on November 9, 2017, were written by the detectives who took the statements. App. 20, ll. 7-12; App. 30, ll. 21-22.

During the Denno hearing, Petitioner testified consistently with the statement he gave in April 2018. Petitioner maintained that he had been awake for several days using methamphetamine prior to being interviewed on November 9, 2017, and that he had difficulty remembering the conversations he had had with police that day. App. 47, l. 21-App. 49, l. 17. When questioned about the incident, he testified that Wilkins had stabbed Stone while Stone was on top of him, but he was unsure how many times she stabbed him. He further testified that he dismembered Stone's body because Wilkins asked him to. App. 54, ll. 6-13. Petitioner stated he gave false statements to police on November 9, 2017, to protect Wilkins. App. 65, l. 21-App. 66, l. 1.

The trial court ultimately ruled Petitioner's statements were admissible. The court acknowledged there was conflicting testimony about whether Petitioner was under the influence when he gave his first two statements. However, the court found the detectives' testimony that he did not appear to be under the influence and that he spoke coherently and logically enough to provide them with a cover-up for his mother meant he was not sufficiently under the influence such that his ability to understand what he was doing was impaired. App. 79, l. 2-23.

At the conclusion of the Denno hearing, the State moved to prevent the defense from presenting evidence of third-party guilt. Counsel Morin explained that Wilkins had also been charged with the murder of Stone and that the defense intended to pursue the theory that Wilkins, not Petitioner, committed the murder. Solicitor Barnette informed the court that Wilkins had

been charged with murder but that she had recently pled guilty[4] before Judge Cole. The State did not know if Wilkins would testify during trial and stated it would depend on what the evidence showed. In allowing the defense to pursue third-party guilt, the trial court noted that there was no dispute that two people were present when Stone was murdered and that the question for a jury would be which one committed the murder if the parties did not act in concert. The State agreed and informed the trial court that it would be requesting a "hand of one, hand of all" charge if the evidence presented supported the charge. App. 80, l. 1-App. 82, l. 11.

The State also moved pre-trial to exclude any testimony regarding prior altercations between the defendants and Stone. Specifically, the State sought to exclude a 2014 domestic violence incident involving Wilkins and Stone and a 911 phone call made by Stone the day of the murder. Regarding Stone's domestic violence conviction, the State argued it was too remote in time and not relevant to the case. Counsel Morin argued the conviction supported the defense theory of the case that Wilkins and Stone had prior problems which gave her a motive to murder him. As to the 911 call made by Stone on the day of the murder telling police that he did not want Petitioner on his property, the State argued the call was not relevant, was hearsay, and if relevant was highly prejudicial. Defense counsel argued that the 911 call included statements by Stone of his intent to harm Petitioner if he came to Stone's home was relevant and was

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4 Wilkins ultimately pled to accessory after the fact to a felony and desecration of human remains. She was sentenced to an aggregate term of twenty-years imprisonment. The murder indictment was dismissed. At the same plea hearing, Wilkins also pled guilty to a conspiracy to commit kidnapping charge for an additional fifteen-year concurrent sentence. See https://publicindex.sccourts.org/Cherokee/PublicIndex/PISearch.aspx (search Wilkins, Dawn); See also Wise v. Wise. 394 S.C. 591, 601, 716 S.E.2d. 117, 122 (Ct. App. 2011) (noting an appellate court can take judicial notice of a fact that was not before the lower court if the fact is indisputable); Freeman v. McBee, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) (stating a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records).

admissible under the hearsay exception of then-existing mental state of the declarant contained in Rule 803(3), SCRE. The trial court ultimately ruled that it would not rule on the motion to exclude the evidence of the prior altercations between the parties until the issue arose during trial. App. 82, l. 10-88, l. 7. Prior to the court taking a brief recess the State then put on the record that it had offered to dismiss the dismembering a body charge if Petitioner pled "straight up" to the murder charge. App. 88, l. 11-App. 89, l. 5.

When the trial court reconvened, the State announced that Petitioner was pleading guilty, without negotiations or recommendations, to the charge of murder. App. 89, ll. 9-18. During the plea colloquy, the court asked Petitioner whether he had a defense to the charge of murder, to which he responded that he felt if he went to trial, he would be found guilty. He stated that if he went to trial, he would tell the jury what happened, which was that he and Stone fought, and it resulted in Stone's death. The trial court again asked if Petitioner had committed the crime of murder, to which he replied, "[y]es, your Honor." App. 92, l. 13-App. 93, l. 15. Petitioner informed the court that he had only completed the eighth grade and that he had been treated at William S. Hall Psychiatric Facility for behavioral problems, PTSD, and substance abuse. App. 100, ll. 24-25; App. 102, l. 2-App. 103, l. 1.

The trial court questioned Counsel Morin about any possible defenses. Counsel Morin responded that he may have been able to establish a case for manslaughter or a case for self-defense, but he believed the success of those defenses was negligible. App. 116, l. 24-App. 117, l. 9. The trial court confirmed that Petitioner wanted to have his guilty plea accepted and then asked Petitioner if he had anything to say. Petitioner responded that he planned to use his time incarcerated to finish his education and become a better person. He apologized to the family for what had happened to Stone and stated he wished he could go back in time and change what

occurred. When the court specifically asked what Petitioner admitted to doing, he stated that he was "truly guilty of the dismemberment" but felt that if he went to trial for murder, he would be found guilty. Petitioner stated that he had only stabbed Stone after he was deceased but that he had no way to prove that and feared he would be convicted as an accomplice to Wilkins. App. 118, l. 8-App. 119, l. 22. The trial court ultimately accepted Petitioner's plea and sentenced him to thirty-five-years' incarceration. App. 124, ll. 16-19; App. 129.

Post-Conviction Relief Proceedings

Petitioner did not appeal his conviction and sentence. On December 2, 2020, Petitioner filed an application for post-conviction relief, alleging ineffective assistance of counsel and a Brady[5] violation. App. 162-169. On June 11, 2021, the State filed a return and motion for a more definite statement. App. 169-178. An evidentiary hearing was convened before the Honorable G.D. Morgan, Jr., on April 19, 2022. The State was represented by Chelsey Marto. Petitioner was represented by Rodney Richey. App. 179-180. At the hearing, Petitioner proceeded on a single claim of newly discovered evidence.

Petitioner testified that he did not stab Stone and that Wilkins was solely responsible for the murder of Stone. He presented a letter, written to him from Wilkins, in which she admitted to stabbing Stone the night of the murder. App. 184, l. 6-App. 185, l. 19; App. 226. Petitioner admitted he had pled guilty but stated he did so because he did not feel like he could fight the charge. App. 187, ll. 6-11. On cross-examination, Petitioner testified consistently with his statement from April 2018 and his testimony at the Denno hearing. Petitioner maintained that Wilkins had called him, stating Stone was threatening her, and while on the phone he heard Stone threaten them both. He confirmed he was there when Stone was killed but stated that he

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[5] 373 U.S. 83 (1963)

did not kill him and only took part in the dismemberment. He stated he pled guilty because Wilkins was saying he stabbed Stone, and with the false statement he gave while under the influence of methamphetamine, everything was stacked against him, so he was scared to go to trial. App. 189, l. 3-App. 191, l. 3. Petitioner testified that he only did what his mother told him to do that day, from going to pick her up to attempting to get rid of Stone's body after Wilkins had killed him. App. 191, ll. 5-17. He stated he was defending himself from Stone, who was on top of Petitioner with a switchblade, when he saw Wilkins move her hands down in a stabbing motion. App. 192, ll. 10-19.

Wilkins testified at Petitioner's PCR hearing and authenticated the letter she sent Petitioner wherein she admitted to stabbing Stone. App. 198, ll. 3-21. Wilkins admitted that she had stabbed Stone twice in his lower back with a "dragon dagger." She confirmed that Petitioner had not stabbed Stone. She testified that had not admitted to anyone that she was the one who had stabbed Stone to death while the case was pending. Wilkins testified she called Petitioner for help that day because Stone had threatened her life, when he arrived, Stone jumped him and the two were fighting. She claimed that during the fight, Stone had Petitioner pinned and was getting a knife out of his pocket to harm Petitioner, so she stabbed Stone to stop him from killing her son. App. 197, l. 7-App. 201, l. 24.

Wilkins testified that Stone "didn't do much of anything" after being stabbed and that Petitioner was able to subdue him by placing him in a chokehold. App. 202, ll. 1-12. However, she believed the stabbing was what ultimately killed Stone. App. 203, ll. 2-24. She openly admitted during the PCR hearing that she committed the murder of Stone and that she let Petitioner "take the fall" for it because she was scared and not clear minded at the time. She

stated she has since been medicated and was admitting to being the person who murdered Stone to set things right. App. 205, l. 16-App. 207, l. 22.

Counsel Morin confirmed that the first time he had heard Wilkins admit to murdering Stone was during the PCR hearing. He believed her confession would have been helpful to Petitioner's case but acknowledged there were multiple stories about what had happened when Stone was murdered. App. 211, l. 15-App. 212, l. 17. He admitted that Petitioner could have been convicted under a "hand of one, hand of all" theory and stated that he believed entering the plea was a better alternative to going to trial. App. 215, l. 22-App. 216, l. 8. He opined that Wilkins's confession would have likely resulted in her getting a higher sentence, but he did not know if it would have impacted Petitioner's sentence. App. 217, ll. 8-14.

Solicitor Barnette testified that he had not heard Wilkins admit to the murder prior to the PCR hearing. He noted that both had given various statements that had changed, and he was amazed that they had changed their story again after the case was over. He believed he would have been able to convict both under the "hand of one, hand of all" theory because Petitioner put Stone in a chokehold after Wilkins had stabbed him. App. 219, l. 15-App. 220, l. 16. On cross-examination, he admitted that Wilkins's statement at the hearing stating she was the culpable party in Stone's death was given under oath and that he would not have let her plead down to accessory after the fact if she had admitted to the murder. He confirmed that at trial the State would have proceeded under the theory that Petitioner was the principal actor in the murder based on the statements he gave on November 9, 2017. According to Solicitor Barnette, Wilkins's admission to the crime would not have impacted his analysis of Petitioner's case. App. 221 l. 1- App. 222, l. 20.

The PCR court took the matter under advisement. App. 223, ll. 9-10. An order of dismissal was filed on July 5, 2022. App. 227-234. In the order, the PCR court found that Petitioner had failed to meet his burden of proof under the test articulated in Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014). The court found that because Petitioner had seemingly always been aware that Wilkins, and not him, had stabbed Stone that the information was not new. The court further wrote that even if Wilkins was now willing to assume responsibility for the murder, it did not mitigate Petitioner's culpability under the "hand of one, hand of all" theory. The court reasoned that the ultimate analysis regarding Petitioner's guilt remained unchanged considering Wilkins' confession and that the information was therefore not of "such a weight and quality that the plea must be vacated in the interests of justice." App. 201.

ARGUMENT

The PCR court erred when it determined that Petitioner failed to prove his claim of newly discovered evidence where the court ruled that the post-plea confession to the murder of Stone by Petitioner's biological mother and co-defendant was 1) not new information to Petitioner and 2) not evidence of such a weight and quality that the interests of justice required Petitioner's plea to be vacated.

Jamison v. State

In Jamison v. State, 410 S.C. 456, 765 S.E.2d. 123 (2014), this Court considered a claim of newly discovered evidence asserted during the PCR stage after a defendant had pled guilty. Jamison, who was a known drug dealer, had been having altercations with another rival dealer named Jig. Prior to the incident that resulted in Jamison's arrest, Jig and his group had attacked Jamison in his home. On the evening of the incident, Jamison had gone to a concert and encountered Jig and his group. An eyewitness testified that Jig's group walked past Jamison and "gave him a look like, yeah, we're going to get you tonight." After the concert Jamison encountered the rival group in the parking lot. Jamison alleged that Jig pointed at him, and the group began to approach him as if to blitz him. Jamison pulled out a gun and fired shots toward the advancing group. An innocent bystander was struck and killed. Id. at 460, 765 S.E.2d at 124-125.

Jamison was arrested fleeing the scene. He admitted to police that he had shot into the crowd but stated the intended target was Jig. He was charged with murder but eventually plead guilty to voluntary manslaughter. Id. Jamison's defense to the charge was that he was acting in self-defense because Jig had a gun that night and had "come at him." However, despite several attempts to find witnesses, the defense could not locate anyone to confirm Jamison's assertion

that Jig had a gun. Id. at 462, 765 S.E.2d at 126. Jamison's first PCR application, alleging an involuntary guilty plea, was dismissed. Id. at 463, 765 S.E.2d at 126. While serving his prison sentence, Jamison met another inmate who admitted to being a witness to the shooting. This other inmate, Theotis Bellamy, was willing to testify that that Jig had a gun in support of Jamison's self defense theory. Jamison filed a second PCR application alleging newly discovered evidence and attached an affidavit by Bellamy to the application. Id.

At a hearing on the second PCR application Bellamy testified that he was familiar members of the rival group that had approached Jamison the night of the shooting and knew them to carry guns. Id. at 463-464, 765 S.E.2d at 126-127. He stated he specifically saw Jig with a gun just prior to the shooting and that he saw the group gesturing toward Jamison like they were about to pull out weapons. Bellamy testified that Jamison shot at Jig before Jig and his group could shoot Jamison. He admitted that he did not come forward previously because Jig had threatened his family but now that Jig was in federal prison, he felt more comfortable testifying. Jamison testified that his guilty plea was influenced by the fact that no witness would come forward to corroborate his claim that Jig had a gun. Id. The PCR court granted Jamison relief on the basis of "fundamental fairness" and ordered a new trial. The PCR court found that Bellamy's testimony constituted newly discovered evidence that would likely change the result at trial. Id. at 464-465, 765 S.E.2d at 127. The Court of Appeals affirmed the PCR courts grant of a new trial and the State appealed. Id. at 465, 765 S.E.2d at 127.

In analyzing the case this Court announced a new test for evaluating claims of newly discovered evidence arising during PCR where the defendant had entered a guilty plea.

> Guided by the language of section 17–27–20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered

> after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Id. at 470, 765 S.E.2d. at 130. This Court cautioned that it would be "the rare case indeed" where the interest of justice required that a knowing and voluntary guilty plea would be vacated through the PCR process based on a claim of newly discovered evidence. Id.

Applying the newly developed test to the facts at issue in Jamison this Court found that there was evidence to support the PCR court's finding that Jamison could not have discovered Bellamy's testimony prior to pleading guilty. However, this Court also found that the interests of justice did not require Jamison's plea to be vacated. Id. Specifically, this Court wrote that the weight and quality of Bellamy's testimony as "evidence of **material** facts not previously presented and heard" was severely undermined because the testimony pertained to a theory of transferred self-defense which was a defense claim that had not been recognized in South Carolina. This Court ultimate held that Bellamy's testimony did not constitute evidence of a material facts within the language of the PCR Act and that Jamison's pled guilty without the knowledge of Bellamy's testimony did not constitute an injustice that would permit Jamison to disavow his guilty plea. Id. at 471-472, 765 S.E.2d at 130-131.

Applying the test and reasoning espoused in Jamison to the facts of Petitioner's case reveals that Wilkins confession was newly discovered evidence and that Petitioner's case is one of the rare cases where the interests of justice require his plea to be vacated.

Applying Jamison to the facts of Petitioner's Case: Newly Discovered Evidence

In the matter *sub judice* the PCR court ruled that the written and testimonial confession of Wilkins was not newly discovered evidence because Petitioner "seemingly has always been aware of who stabbed the victim." App. 233. Not only did the PCR court's ruling improperly conflated **knowledge** of a fact with **evidence** of a fact, but it was also not supported by probative evidence in the record. See Pierce v. State, 338 S.C. 139, 144, 526 S.E.2d. 222, 225 (2002) (If no probative evidence exists to support the PCR court's findings, this Court will reverse). This Court should find that the Wilkins confession constituted newly discovered evidence.

Knowledge[6] is defined as the awareness or understanding of a fact or circumstance. Evidence[7] is defined as something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact. Knowledge and evidence are not synonymous. Often one can have knowledge of a fact but not have evidence of that fact. Jamison, *supra*, is illustrative of this point. While Jamison had knowledge of the fact that Jig was armed with a gun, he had no evidence to prove that fact until another inmate admitted he had witnessed the events and saw Jig with a gun prior to the shooting.

Undoubtedly, Petitioner had knowledge that he was not the person that had stabbed Stone – he even testified during his plea hearing that he "was truly guilty of the dismemberment" but believed he would be found guilty at trial because he had no way of proving that he had not

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6 KNOWLEDGE, Black's Law Dictionary (11th ed. 2019)

7 EVIDENCE, Black's Law Dictionary (11th ed. 2019)

stabbed Stone[8] while Stone was still alive. App. 118, l. 21-Ap. 119, l. 6. Petitioner maintained that Wilkins had stabbed Stone, but he had no evidence of that fact as Wilkins had consistently denied any involvement in the murder. She placed the blame entirely on Petitioner and stated her only involvement was in moving the body from the front yard to behind the trailer. App. 144-151.

Petitioner testified that he saw Wilkins's hands come down in a stabbing motion when he was pinned underneath Stone. In his written statement from April 2018, he wrote that the saw her hands come down in a stabbing motion, was then able to subdue Stone with a chokehold, and then noticed blood on his clothing and wounds to Stone's back. He wrote that he did not understand what was happening because he had been using methamphetamine and had not slept in a week. Again, his position was that Wilkins had stabbed Stone, however he lacked evidence to support that assertion.

Additionally, Petitioner had no way to discover the confession prior to his plea because Wilkins never admitted her full culpability. Wilkins testified at the PCR hearing, that while the case was pending, she did not tell anyone that she had stabbed Stone. Both Counsel Morin and Solicitor Barnette confirmed that Wilkins had never admitted to stabbing Stone prior to the PCR hearing. Further, Petitioner had no way to force Wilkins to admit to the murder prior to the plea. Until Petitioner received the hand-written letter from Wilkins admitting she had stabbed Stone, he had no evidence to support the fact that he was not the one who had stabbed Stone. There was no evidence in the record before the PCR court to support the determination that Wilkins's

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8 Petitioner admitted that he had stabbed Stone after he was deceased. In his written statement from April 2018, Petitioner admits to placing the large knife used to dismember Stone in his chest to "keep it out of the way" during the dismemberment. App. 119, ll. 5-6; App. 141.

hand-written confession and subsequent admission to the murder under oath was not newly discovered evidence.

Like the newly discovered evidence in Jamison, Petitioner had knowledge of a fact, but no evidence of that fact until Wilkins provided her confession. While he knew he had not stabbed Stone, and repeated that fact during his plea colloquy, he had no evidence to support that contention until after he had pled guilty. Based on the reasoning and guidance in Jamison, Wilkins's confession to stabbing Stone and causing his death constituted newly discovered evidence.

Applying Jamison to the facts of Petitioner's Case: The Weight and Quality of the Evidence

The PCR court also ruled that Wilkins's confession did not mitigate Petitioner's culpability because both Counsel Morin and Solicitor Barnette testified that Petitioner could have been found guilty under the theory of " hand of one, hand of all." The court wrote that the "ultimate analysis regarding [Petitioner's] guilt" was left unchanged by the discovery of Wilkins confession and thus the evidence was not of such a weight and quality that Petitioner's plea must be vacated in the interests of justice. App. 201. The ruling by the PCR court was not supported by probative evidence in the record and was not based on the proper considerations.

The question the PCR court had to answer was whether Wilkins's confession was evidence of a material fact not previously presented that was of such a weight and quality that the interests of justice required Petitioner's plea to be vacated. Wilkins's confession was clearly evidence of a material fact. During argument on the pre-trial motion to exclude evidence of third-party guilt the circuit court observed that both the State and defense agreed two people were present at the time Stone was killed, "so the question to the jury is which one of them did it" if they were not acting in concert. App. 81, ll. 15-20. As the circuit court correctly noted, the

main issue for the jury would be to determine who was responsible for the death of Stone – Wilkins, Petitioner, or both. Unlike the testimonial evidence discovered post-plea in Jamison, *supra*, Wilkins's post-plea confession was evidence that went directly to the main issue in the case *and* supported Petitioner's planned defense of third-party guilt.

Admittedly, Petitioner made an incriminating statement to police that likely would have been admitted at trial. However, Petitioner maintained in his April 2018 written statement, and in all subsequent testimony under oath, that he was sleep deprived and under the influence of methamphetamine at the time he gave the incriminating statement. He has also repeatedly maintained that he did not stab and kill Stone but did dismember Stone's body. His answers during the plea colloquy highlighted that Petitioner was not pleading guilty because he stabbed Stone but was pleading guilty because he had no proof to show that Wilkins was the culpable party.

Notably, the PCR court did not make any adverse credibility findings regarding the testimony of Wilkins and Petitioner. In dismissing Petitioner's application, the PCR court did not determine that Wilkins's confession was not credible but found the confession was not evidence of such a weight and quality that Petitioner's plea should be vacated, because it determined that Petitioner would be guilty under a theory of accomplice liability. However, this determination was not supported by the facts in the record and rested solely on the testimony of Counsel Morin and Solicitor Barnette that Petitioner could have been convicted under the theory of "hand of one, hand of all."

The facts in the record did not support a charge of accomplice liability. Solicitor Barnette stated during the pre-trial hearings that he would request a "hand of one, hand of all" charge but only **if the evidence presented at trial supported the charge**. He did not contend that he was

entitled to the charge from the start of the case. Additionally, Counsel Morin informed the circuit court that the defense intended to pursue a third-party guilt claim that Wilkins was the person responsible for the death of Stone and that she alone killed Stone. Counsel Morin also informed the circuit court that there was a potential defense of self-defense and the possibility of developing a case for a voluntary manslaughter charge which indicated facts that would militate against an accomplice liability charge.

Turning to the facts in the record, most tellingly there was no evidence that there was a prior arranged plan or scheme between Wilkins and Petitioner. A prior plan or scheme is necessary for criminal liability to attach to the accomplice who does not directly commit the criminal act. See State v. Washington, 431 S.C. 394, 406, 848 S.E.2d 779, 785 (2020). Stated plainly, the intent element of accomplice liability was not established by the facts that were in the record before the PCR court.

The facts in the record were that Wilkins called Petitioner the day of the murder and asked him to come pick her up because Stone had threatened her. During that conversation, Petitioner and Wilkins stated that Stone threatened to kill Petitioner and Wilkins if Petitioner came to Stone's property. Despite that threat, Petitioner found a ride to Stone's house and attempted to get his mother. Stone confronted Petitioner at the front door of the trailer and struck him starting a physical altercation. During the altercation, Stone at one point pinned Petitioner to the ground and pulled a knife from his pocket to stab Petitioner. Wilkins then stabbed Stone twice in the back with a dragon dagger. After Wilkins stabbed Stone, Petitioner placed Stone in

a chokehold[9] to subdue him. There was no evidence in the record that there was a common design or intent to commit a crime nor that a crime was committed pursuant to a plan between Wilkins and Petitioner. There was no evidence in the record to support the conclusion that Petitioner would absolutely be found guilty under a theory of accomplice liability. Thus, Wilkins's credible confession was material evidence of a such quality and weight that Petitioner's plea should be vacated in the interests of justice.

Petitioner's guilty plea can be, at best, described as equivocal. He repeatedly indicated he was pleading guilty because he did not think he could prove that he did not stab Stone based on the evidence at the time. He also informed the court that he was only guilty of the dismemberment of Stone, not the murder of Stone. There are numerous conflicting statements in the case and no forensic evidence that proved Petitioner stabbed Stone. Considering the facts and circumstances of this case, to find that the confession of Wilkins does not constitute evidence of a material fact, not previously heard, that is of such quality and weight that, in the interest of justice, require Petitioner's plea to be vacated would constitute "a denial of fundamental fairness shocking to the universal sense of justice." Butler v. State, 320 S.C. 466, 468, 397 S.E.2d 87, 88 (1990).

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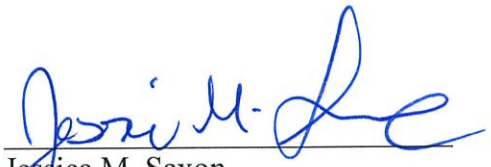
9 The order of dismissal contends that Wilkins testified that Petitioner held Stone in a chokehold while she ran to get a knife to stab him in the back. Petitioner contends this was a liberal reading of the testimony. On direct examination, Wilkins testified that Petitioner placed Stone in a chokehold **after** she stabbed him. App. 202, ll. 2-11. On cross-examination the State asserted that Petitioner put Stone in a chokehold to help Wilkins get a good aim to which she responded, "I guess." App. 208, ll. 4-12. Wilkins also testified that Stone was on top of Petitioner at the time she stabbed him. App. 208, ll. 19-20.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allowing full briefing of this issue.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of February, 2023.