

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 26 2023

S.C. SUPREME COURT

Certiorari to Colleton County
Honorable Eugene C. Griffith, Circuit Court Judge

TEQUAN L. BROWN,

PETITIONER

Vs.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO.2022-001337

MOTION TO HOLD APPEAL IN ABEYANCE

YOU WILL NOW TAKE NOTICE, that the above named petitioner will move this court, to hold his appeal in abeyance pursuant to rule 29(b) of South Carolina Rules of Criminal Procedure. Petitioner makes this request on the following grounds:

- 1.) After the trial of this case new evidence of material facts, not previously presented and heard, that in the interest of justice requires vacation of the conviction, and sentence.
- 2.) This new evidence would probably change the result if a new trial was had.
- 3.) This evidence could not by the exercise of due diligence have been discovered before the trial.
- 4.) The evidence is material to the issue of guilt or innocence, and
- 5.) Is not merely cumulative or impeaching.

IN SUPPORT OF THIS MOTION PETITIONER ASSERT AS FOLLOWS:

- 6.) On or about November 20th, 2013, at approximately 4:48 a.m. the victim ("Kemp") came to the petitioner's house, highly intoxicated by a combination of cocaine, alcohol, and marijuana (see autopsy report) demanding entry.
- 7.) Kemp upon seeing Petitioner started making threats towards Petitioner's life and forced entry into Petitioner's home. Kemp then proceeded to exit Petitioner's residence via back door, and then circle the apartment banging on the windows, demanding to be let back in so he could access his car by passing through Petitioner's apartment again.
- 8.) When the Petitioner refused, Kemp again began threatening Petitioner, Kemp then walked around the apartment to return to his car. The next-door neighbor (Holmes) came over upon hearing the disturbance with his pistol, which Petitioner took away from Holmes to avoid antagonizing Kemp, given his hatred for Holmes.
- 9.) Petitioner, Walker, Holmes, and others were already in the Petitioner's front yard when Kemp finished rounding the building when Ms. Barbara came over, Kemp exited his car, "talking stuff" to Petitioner, and others. Petitioner told Kemp to leave. Kemp responded by running towards Petitioner while reaching. Kemp crossed from the parking lot which was separated from the apartment building's front yard by a side-walk into Petitioner's yard at which time Petitioner shot him.

II. NEW DISCOVERED EVIDENCE

- 10.) Wiley D. James, a witness who at Petitioner's residence the night of the shooting, and who also gave testimony at the pre-trial immunity hearing pursuant to the protection of persons and property act.
- 11.) James after the trial of this case admitted that after the shooting he was walking back towards his car (see. James aff. para. 22) he saw a black gun in (Kemp) hand and he picked it up from under Kemp, and ran to his car and took it to Jacksonboro.
- 12.) James admitted that while in Jacksonboro later on in the day of November 20th, 2013, that he was able to identify the gun he removed. Which was a black 357 caliber snub-nose revolver. In which James later sold.

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In addition to James admission to the removal of Kemp's gun. In support of this motion, the Petitioner specifically craves reference to the witness testimony of Dr. Erin Presnell, the forensic pathologist of MUSC.

- 13.) Dr. Presnell report, and testimony in this matter are, and will be that Kemp's wound was not a contact wound. i.e. meaning the gunshot wound being a more distance range as opposed to being a contact or very close range, and not as the solicitor claimed.
- 14.) Dr. Presnell testimony will be that, if Kemp was shot as close as SLED trace evidence "Whitney Berry". Dr. Presnell would have seen stippling, or soot.
- 15.) Dr. Presnell testimony also will be that in general with handguns you can see stippling up to approximately 3 and a half feet between the barrel of the gun, and the skin.
- 16.) The next thing Dr. Presnell would have seen is, unburned gun powder(soot) which only travel a very short distance. Dr. Presnell testimony will be that, if this was a close range shooting as claimed by Whitney Berry, (i.e. contact, or close range) unburned gun powder would have been propelled into the skin and possibly through the wound itself, and she would have seen a black or gray discoloration actually in the skin, or beneath the wound itself, and searing which is a burning of the skin at the site of the gun shot wound if it was as close as the state claimed.

III. IN ADDRESSING THE SUFFICIENCY OF THE EVIDENCE

The testimony of Whitney Berry at the hearing, and trial of Petitioner went beyond Berry's educational background and training.

Berry's training only allows her to detect the presence of gun shot residue, and anything further then that is for the forensic pathologist "Dr. Susan Erin Presnell" who performed the autopsy.

In addition to the forensic testimony of Dr. Presnell, and the actual evidence at the scene do not support the state's theory of Kemp being shot within 3 feet from the muzzle of the gun. Based upon Dr. Presnell review, and information, and Wiley James admission. The GSR on Kemp's hand came from the snub-nose 357 caliber revolver that Kemp had on his persons. While running towards Petitioner while reaching in his waistband.

Given the new evidence obtain after the trial of Petitioner, and the fact that there is no TESTIMONY from any of the eye-witnesses, that Petitioner threatened,

provoked, or caused any sort of disturbance towards Mr. Kemp. Rather, the testimony of Jermaine Brown, Wiley James, Lawrenzer Walker, Barbara Mays, Nayronne Holmes, and Petitioner himself. All the results are uncontroverted that Kemp was at his car then advanced on petitioner in a threatening manner.

Petitioner was without fault in bringing on the difficulty and the state failed to prove that Petitioner was with fault, or was at least the aggressor.

“Where there is no evidence to support a conviction an order granting a new trial should be up held.” State v. Smith, 316 S.C. 53 447 S.E. 2d 175

THEREFORE, based on all the foregoing reasons, Petitioner respectfully request to hold his appeal in abeyance.

RESPECTFULLY SUBMITTED,



Date: 4/24/23

Tequan L. Brown

Ridgeland Corr. Inst.

P.O. Box 2039

Ridgeland, S.C. 29936

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State of South Carolina)
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County of Colleton)
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United States, and State of)
South Carolina,)
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Plaintiff,)
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v.)
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Tequan L. Brown,)
)
Defendant.)

In the Court of General Sessions
Indictment No. (s) 2013-GS-15-1040,
2013-GS-15-1041, 2013-GS-15-1042.
Appellate Case No. 2015-001447
Federal Case No. 2:10-CR-1197

AFFIDAVIT OF JAMES D. WILEY

Personally appeared before me Wiley D. James, who after being duly sworn, deposes and says:

- 1.) I have personal knowledge of the facts set forth herein, I am over the age of 18, and I am competent to testify.
- 2.) I make this affidavit of my own personal knowledge of the matters stated herein.
- 3.) I make this affidavit of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any persons whomsoever.
- 4.) I, Wiley D. James, make this affidavit voluntarily, knowingly and intelligently.
- 5.) I, Wiley James, on or about November 20, 2013, at approximately 12:00am received a phone call from Tequan Brown, informing me that Coco was at his house and she wanted to make some money.
- 6.) I, Wiley James, ask Tequan how Coco look, Tequan stated that she look okay. He said that Coco needed to make some money. Tequan stated that Coco wanted to have some sex for money, \$50.00. I told Tequan that I would come over after Jermaine Brown and Jerome Hall get back with the car.
- 7.) Thereafter, I Wiley James, got off the phone with Tequan. Jerome and Jermaine came back to my house, I told both of them about Tequan's call, so Jermaine Brown, Jerome Hall and myself, Wiley James, agreed to go over to Tequan's house.
- 8.) After I Wiley James, washed off, Jermaine and Jerome went with me to Adams Run, so that I Wiley could pick up some money.

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did the other man. Tequan kept saying over and over, I didn't want to do it, I didn't want to do it.

- 21.) Lawrenzer had gone back inside Tequan's house, and Tequan went in after him. As I Wiley James was walking back towards the car, I heard Big Mo make a loud sound.
- 22.) As I walked past Big Mo, I saw a black gun in his hand and picked it up from under his hand and ran to the car and got in. Jerome, Jermaine and I went to Jacksonboro.
- 23.) The gun that I Wiley James picked up, was on the ground and Big Mo's hand was on top of it.
- 24.) While in Jacksonboro, I was able to identify the gun. It was a black 357 caliber snub nose revolver.
- 25.) Later on the 20th of November 2013, I Wiley James was out looking for someone to sell the gun to. I went across the tracks to check the mailbox. I saw Tremaine Campbell, AKA Baby, at the Sunoco gas station and told him that I had a gun I was trying to get rid of.
- 26.) Baby told me that he had a sale for the gun, and that I could get half of what I wanted for the gun now. Baby gave me \$125.00 and asked me where did the gun come from. I told him Lawrenzer. I did not think about Baby knowing Lawrenzer.
- 27.) On November 21, 2013, Mikey told me that Baby lied, he did not have a sale for the gun. Mikey told me that Baby tried to sell the gun to Tequan at the Sunoco in Jacksonboro.
- 28.) Mikey said that Tequan and Dauaron Gardner was together on November 21, 2013 when Baby tried to sell the gun to Tequan.
- 29.) Mikey said to me, Wiley James, that Baby told Tequan that he got the gun from Lawrenzer. Tequan started talking trash saying "hell no", he didn't want that gun.
- 30.) I, wiley James, did remove the 357 caliber gun from out of Big Mo's hand. No one told me to move the gun. I picked the gun up and kept it moving.
- 31.) One week later, Baby told me, Wiley James, that the police came to talk to him about the gun I sold to him. Baby said that Nyles told him it was the murder weapon. I, Wiley James, told Baby that it was not because it was Big Mo's gun that fell when he fell down.
- 32.) Baby paid me the other half of the \$250.00 a few weeks later for the gun that I removed from near Big Mo. Baby told me that he sold it to "Red", Craige Macal Washington, AKA Red for \$350.00.

- 9.) Thereafter, approximately 2:45am, I Wiley James, along with Jerome and James, sent a text message to Tequan informing him that we were on the way. We arrived at Tequan's house in Walterboro off of Cookshill Road.
- 10.) We were greeted at the door by Lawrenzer Way and asked him where was Tequan, he stated that Tequan was in his room sleeping. So, was asked Lawrenzer Way where was the white girl? He stated that she was next door and that she would be right back.
- 11.) I, Wiley James, Jerome Hall and Jermaine Brown, waited around for Coco, the white girl, but she never showed up.
- 12.) Jerome, James and I fell asleep in Tequan's front room, and shortly thereafter we were awoken by someone at the front door.
- 13.) Lawrenzer open the front door and that's when I saw who it was, a big black man, who now I know as Big Mo. Big Mo pushed past Lawrenzer as he entered Tequan's house. Tequan came from his bedroom into the living room area to see who it was.
- 14.) At that time Big Mo told Tequan if he "Big Mo" find out that Coco was inside his house he was going to kill Tequan.
- 15.) Big Mo pushed past Tequan, and went from room to room and someone told him that the girl was not here, she was next door.
- 16.) Big Mo left out the back of Tequan's house and that's when Jerome, Jermaine and I went out the front door to the car. At that time a man came out of the apartment next door and he went into Tequan's house.
- 17.) Soon thereafter, a lady in a wheelchair came out of the house next door to Tequan, and was calling out a name that I can't recall, but thereafter the white girl came out of the same house. Tequan, Lawrenzer, and the other man came out of Tequan's house, and Big Mo came from around the back.
- 18.) Coco and Big Mo went and entered into his white car, and then, Big Mo got back out of their Car talking trash. Tequan, Lawrenzer, the other man and the woman in the wheelchair all where in Tequan's front yard.
- 19.) Big Mo was talking trash to Tequan and he told Big Mo to leave from here. I heard Big Mo tell Tequan that he was going to kill him. At that time Big Mo started running towards Tequan, and that's when I saw Tequan shoot Big Mo. Big Mo fell down face first.
- 20.) I, Wiley James, got out of the car and ran over to Tequan, and everyone else started moving around real fast, the lady in the wheelchair went back into the house and so

- 33.) When Detective Nyles told me he needed to talk to me, this was the reason I said I don't know nothing about nothing.
- 34.) When I came to court to testify for Tequan, I said to the Judge that I could not remember everything, I lied because I did not want to admit that I moved Big Mo's gun that was in his hand.
- 35.) The only reason that I, Wiley James, am admitting to removing the gun now, because I have to come clean with God. This has been on my heart since June of 2015, I feel bad for Tequan's Mother and Son, and I can't rest with God.
- 36.) I, Wiley d. James, further state that I make this Affidavit of my own free will without promise of hope of reward, without fear or threat of physical harm, without leniency, by any persons whomsoever, and without coercion.
- 37.) I, Wiley D. James, further state that this Affidavit is true to the best of my knowledge. It is truthful and I, Wiley D. James, declare under penalty of perjury that the foregoing is true and and absolutely correct.

Wiley James
Wiley D. James, Affiant
Giving Voluntary Statement

Diana Brown
Witness

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Sworn To And Subscribed Before Me

This 27th Day Of November, 2015

Tom Miller
Notary Public For South Carolina

My commission Expires: 6/23/2026

Teguan Brown #341915
Ridgeland Correctional Institution
Post office Box 2039
Ridgeland, South Carolina 29936

CHARLESTON SC 294

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**RIDGELAND CORRECTIONAL
INSTITUTION**

APR 24 2023

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