

RECEIVED

SEP 28 2023

S.C. SUPREME COURT

AFFIDAVIT OF KRISTON D. NEELY

Appendix

3

I, Kriston D. Neely, after being duly sworn, say:

I am employed with the Legal Department for the City of North Charleston, South Carolina.

In that capacity, I was involved in litigation with Terrell McCoy in his claim against the City and the North Charleston Police Department (Civil Action #: 2013-CP-10-06876).

In the course of that litigation, the City admitted that a 911 recording and CAD report pertaining to Mr. McCoy's criminal trial (CADOOPERATION REPORT #: 2006036162/ Indictment #: 2006-GS-10-4987) was destroyed on (Recording) June 25, 2006, and (CAD Report) March 25, 2009, in compliance with the retention policies of the State of South Carolina and the City of North Charleston.

[Handwritten signature]
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME
This 11th day of December, 2015

Jesse B. Woodale
Notary Public for North Carolina

My Commission Expires: 11-24-2024

DEFENDANT'S
EXHIBIT
H. Neely
App. cards

260

Exhibit #3

August 2, 2013


Terrell McCoy, #256070
PCI C X 9
430 Oaklawn Road
Pelzer, SC 29669

Re: FOIA

Dear Mr. McCoy,

I am in receipt of your second FOIA request regarding the identification of a North Charleston Police Officer named James or J. Fowler. The documents I previously sent to you indicated that there was no active officer named Fowler in 2009. However, in speaking with a clerk from Human Relations, I learned that dispatchers have a different classification. While they technically fall under the North Charleston Police Department, they are considered civilian employees. We did have a female dispatcher named Jenie Fowler who was employed in 2009. She did not appear in the first search because that search was for police officers only and did not include any civilian employees. I hope this information is helpful to you. Ms. Fowler is no longer an employee of the North Charleston Police Department. She is currently employed by Charleston County in the Consolidated Dispatch Center.

Sincerely yours,



Beth Woodall
Legal Department

TBW/hs

TESTIMONY

To: Whomever It May Concern:

I, Terence L. Prizzie Terence L. Prizzic, am making a sworn statement on the events that happen March 24th of 2006 to the best of memory. I lived in the Blakely, Georgia during 2006. On 3/24/2004 at night (unable to remember the exact time) I received a call from my younger brother, Terrell L. McCoy asking me for directions to Blakely from Atlanta, Georgia. My brother said he was in Atlanta selling his CDs of the music record he made, and he wanted to visit me since he was in Atlanta. I gave him directions and he got to my house around 6am or 7am in the morning which was March 25, 2006. He stayed until March 26, 2006 because one of my younger cousins called from Charleston, S.C. saying my brother on the news as a suspect in a murder. My brother and I talked about the situation and decided to hurry back to Charleston so that he wouldn't be a fugitive. That is the end of my testimony.

Sincerely,

Terence L. Prizzic

2023 APR 27 PM 12:11
CLERK OF COURT



4/27/2023

Takiyah L. Sheppard
07/23/2031

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
2013-CP-10-1994

Terrell McCoy, 256070

Applicant

v.

State of South Carolina

Respondent

Rule 29 SCRCrimP
Post Trial Motion

Rule 60(B)(2)(1) SCRCP

Rule 59 SCRCP

Rule 15(a) SCRCP

This motion is brought to this court based on affidavit filed in this Court by Terance Prizzie on April 27, 2023. The affidavit attest that Applicant was with him on March 25, 2006, the date and time the victim Antwan Bryant was killed. Petitioner has exercised due diligence in discovering the evidence could have presented the alibi witness during trial, due to trial counsel Korrle Proctor failure to interview or call witness at Applicant's trial. During a hearing held on January 27, 2009, Judge Dennis ordered Korrle Proctor last administrative duty was subpoena witness. Applicant was indigent and could not perform these duties without the assistance from the State. See Ake v. Oklahoma, 470 U.S. 68, 77, 105 S.Ct. 1087, 84 L.Ed. 2d 53 (1985) PCR counsel failure to contact Mr. Prizzie prior to evidentiary hearing denied Applicant due process right to present favorable evidence. Pursuant to S.C. Code Ann. 17-27-45(c) (2014) Trial Counsel was ineffective under Strickland v. Washington, 466 U.S. 699, 104 S.Ct. 2052. Petitioner move this court pursuant to SCRCP Rule 15, where Petitioner's Post Conviction Relief was held on December 14, 2015, this motion is also brought pursuant to Rule 29 SCRCrimP, SCRCP Rule 59, and 60(b)(2). During Summary Judgment held on September 9, 2015, Judge Hyman did not issue a order granting the Respondent's motion for Summary Judgment in part. There is no Summary judgment order issued. The PCR Judge Deadra Jefferson ruled, PCR counsel did not appeal Judge Hyman's order. This is mistake, error of law under SCRCP Rule 60(B)(1). The clerk of Court not attorney general Rutledge Johnson issued a order. Applicant assent exceptional circumstances exist. See Kemp v. United States -- U.S. -- 142 S.Ct. 1856, 213 L.Ed. 2d 90 2022. That warrant(s) a new trial. In regards to Petitioner's newly discovered evidence, Applicant's alibi witness

was filed in the Clerk of Court by Terance Prizzie. Terance Prizzie testimony would change the result if a new trial was had, has been discovered since trial and could not by the exercise been discovered before trial. Applicant could not subpoena Terance Prizzie because Applicant was detained in Charleston County Detention Center. As stated above Judge Dennis ruled the public defender's last administrative duty was to subpoena all witnesses, harelle Proctor failed to subpoena Terance Prizzie, and Jenne Fowler. This render her ineffective. Terance Prizzie testimony is material to the issue of innocence and is not merely cumulative or impeaching. See Affidavit of Terance Prizzie, See January 27, 2009 hearing transcript page 29 line 8-24; September 9, 2015 Summary Judgment hearing page 11-19; A hearing is necessary extraordinary circumstances exist. State v. Irvin 276 S.C. 539, 545, 243 S.E. 2d 195, 197 (1978); State v. Porter, 269 S.C. 618, 621, 239 S.E. 2d 641, 643 (1977); Clark v. State, 315 S.C. 385, 434 S.E. 2d 266 (1993) Underwood v. State, 309 S.C. 560, 425 S.E. 2d 20 (1992)

For these Reason Petitioner should be granted a New trial.

9-25-23

Inelle Mcc 256070
PCI CoX. 3
430 Oaklawn Rd
Pelzer SC 29669