

George Cousins #350976
Applicant

Notice of Appeal

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MAR 04 2024

SC Court of Appeals

v.

State of South Carolina
Respondent

February 28, 24

Prima Facie

Administrative Chief Judge Michael G. Nettles Fourth Judicial Circuit
 Austin v. State 305 S.C. 453, 409 S.E.2d 395 (1991) The Supreme Court Remanded A For
 an Evidentiary hearing Austin Appeals do not have to be filed within the one year
 Statute of Limitations because they are belated Appeals intended to correct unjust
 Procedural defects noted. The Government's contention fall under the Clear Error of
 LAW portion of Rule 59)E) Third Prong the Government contends that the court
 committed a clear ERROR of LAW limiting its cross examination of the Defendant
 Phillips v. State 281 S.C. 41, 314 S.E.2d 313 (SC, 1984) The Supreme Court held that Defendant
 Failure to sign a waiver of indictment invalidated Guilty Pled AND case citing Phillips
 South Carolina Code of LAW ANN: §§ 17-23-130 Public Defender Plea Counsel Richard Jones
 did no investigation on the defendant case [Stuart Axelrod] Petitioner Attorney for
 his reconsideration hearing also testified AT The P.C.R. hearing APP. 92 1.8 Axelrod
 before Petitioner reconsideration hearing APP. 94 11. 13-15 Axelrod asked the Plea
 Counsel if he promised Petitioner a Fifteen year sentence if ~~he~~ Petitioner Pled Guilty
 And Plea Counsel confirmed that he did promise Petitioner yes. APP. 94. 11. 15-17
 Axelrod testified his initial though after his conversations with Plea Counsel was
 [Petitioner] is telling me the truth. APP 94. 1. 18 Axelrod then went into Judge Burch's
 Chamber he told Judge Burch that Plea Counsel promised Petitioner would get
 Fifteen years imprisonment if he Pled Guilty Petitioner was induced by his representation
 Petitioner would not have Pled Guilty and insisted on going to Trial There was a
 Trial for July 9, 2012 in the courthouse but the Petitioner did not show until many
 Later Aug 30, 2012 when Mr Cousins would see his Rules discovery for the first time
 In Lieber Prison Violation From Due Process of LAW 14 Amendment Fifth Amendment
 Miranda Right were never read to me by Timothy D Shaw Arresting officer on
 July 18, 2010. I have proof. Voluntary statement by the officer
 under the penalty of perjury that the foregoing is True and
 Correct. George Cousins

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Actual Innocence

This Court should begin its analysis of whether to grant relief in this case by reviewing the extraordinary exculpatory evidence that was in Plea Counsel's possession prior to the Plea hearing. The Attorney General provided the discovery material to the defense 2/11/2011.

Exhibit ONE

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory. This is an examination of two GSR kits submitted in this case. First ONE GSR kit from George A Cousins
Item: 8.1 Right Palm

RESULTS: Round lead particles were found. Round lead particles are one of the components of gunshot residue.

Item: 8.2 Right back no indications of gunshot residue.

Item 8.3 Left Palm no indications of gunshot residue.

Item 8.4 Left back no indications of gunshot residue.

SECOND ONE GSR kit from Tammy Norris Locklear

Item: 9.1 Right Palm No gunshot residue was found.

Item: 9.2 Right back Round lead particles were found.

Item: 9.3 Left Palm. No gunshot residue was found.

Item: 9.4 Left back Round lead particles were found.

Kelly W. Hall, Assistant Attorney General, Argued to the Court:

This time a gun was brought into the argument, and that gun was

under the penalty of perjury that the foregoing is true and correct. George Cousins

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Case No: 2022-CP-34-00176

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used, pointed at the victim, and she was shot in the head. Your Honor
APP. 27, 11. 2-4. She then stated: What he did was try to cover up this crime
He meticulously tried to clean the crime scene.

There are three critically important issues which arise:
ONE. If Petitioner allegedly pointed the gun at the victim's head
and fired the gun. How did gun shot residue get underneath his
hand? Two if the victim has gunshot residue on the outside of
both hands. Would it be reasonable to believe that she held both
hands facing herself in a defensive position?

Three if Petitioner actually was meticulously cleaning the entire
crime scene it would be unreasonable to believe he protected his
right palm where the GSR was found well after this alleged cleaning?

Exhibit Two

At the PCR hearing Richard Jones Plaintiff Counsel testified: ONE of the
things that Mr. Cousins never did explain to me exactly what
happened and I'm not sure if he knows. APP. 86. 11. 21-23.

Exhibit Two consists of Mr. Jones notes taken on
November 2, 2011 at the Marlboro County Detention Center with
George Cousins. It appears Mr. Cousins stated: Got to fessing - he went
into bedroom - walked away she followed him - argued - got crazy -
she wanted to get more pot. He was tired. Gun on the kitchen table
magazine there also she was getting out of control. They struggled

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She slapped him - she was kicking. She grabbed the gun, he backed up -
she was acting strangely - she cocked the gun - Both fell together, he
was trying to get the gun - he got it, struggled - it went off.

It appears Mr Cousins gave a fully detailed account of what
happened and Mr Jones wrote it down. His testimony seems
contrary to his notes.

Would it be reasonable to infer Ms Locklear held the gun

with both hands and petitioner had his right hand on the weapon
when it fired? This is the exact scenario described to Mr Jones in
his notes and his allegation I'm not sure he [petitioner] knows what
happened is clearly false.

Exhibit Three

On July 18, 2010 a Marlboro County 911 CAD Incident Detail was
recorded Original Dispatch Remarks: States him and a female sub
was having a minor 1082. Advises female subject grabbed a 1059 He states
he tried to take the 1059 from the female subject Advises that the
1059 accidentally went off Advises that female sub has 1 gun shot
wound to the head. Again, Kelly W. Hall, Assistant Attorney General Argued
to the court: The Defendant told 911 that he shot her in the head. Told
Dispatcher that he shot her in the head, App. 28, 11.6-7

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MS. Hall concluded: The defendant chose to point the gun at the victim, chose to have a firearm in the middle of a violent argument, a violent situation [but] he chose to take this gun, point it at the victim's head and shoot her, App 30, 11.4-6, 8-10.

CONCLUSION

The evidence presented by officers of court on both sides has no substantial support and clearly fabricated. Both accounts are refuted by the trace evidence reports. Petitioner's alleged pointing and firing a gun is highly improbable when the GSR would find its way between the inside of petitioner's palm and the pistol's grip. It would be simply amazing for Ms. Locklear to receive GSR on the outside of both hands without holding the gun itself. The fact that petitioner was sent to prison on any charges for preventing his own fatal injuries is a miscarriage of justice.

The Assistant Attorney General should be held accountable to provide the source of the allegations presented to the court prior to the anticipated claims of default in a motion for summary judgment.

This court is respectfully requested to hold a hearing on the Actual Innocence of petitioner where it was impossible to raise a timely challenge in the state courts because of the incomplete records. The petitioner did not pull the trigger with an open palm under the penalty of perjury that the foregoing is true and correct, George Cousins

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b Ground Two

SUPPORTING FACTS

intentionally cause great bodily harm to petitioner. It is completely unreasonable to give Mr. Jones account that petitioner fired the weapon any credibility, due to the fact its impossible to fire a gun and find GSR inside the palm, without a trace on the back of his hand

Petitioners Exhibit #3 A CAD Incident Detail Correlates Petitioner version of the events in Mr Jones notes in Exhibit #1

Original Dispatch Remarks: States THAT Him AND A FEMALE SUB WAS HAVING A MINOR 1082 ADVISES FEMALE SUB GRABBED A 1059 HE STATES HE TRIED TO TAKE THE 1059 FROM THE FEMALE SUBJECT. ADVISES THAT THE 1059 ACCIDENTLY WENT OFF. ADVISES THAT FEMALE SUB HAS 1 GUNSHOT WOUND TO THE HEAD

The petitioner has presented a Prima Facie argument which establishes that an attorney who has practiced for 41 years in law would basically deceive the P.C.R. court with testimony he knew to be false. Given the above facts, a voluntary manslaughter plea where the petitioner made an attempt to defuse a violent situation over marijuana, protecting himself from imminent danger would be proof that counsel's representation fell below an objective standard of reasonableness, considering the petitioner did not pull the trigger, he should never been charged with anything. Prejudice presumed and immediate acquittal should be granted. s.b

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b. Ground Two Supporting Facts

Have you presented Ground Two in a prior court action or administrative proceeding?

The testimony of Richard Jones was elicited through Mr. Lance S. Boozer, Esquire at Petitioner's POST-Conviction-relief hearing. Although Mr. Boozer more than likely did possess Mr. Jones Plea hearing Discovery materials, the petitioner asserts it would have been beneficial to impeach Mr. Jones pretrial strategies and expose the fact he made false statements in his representation of the petitioner. P.C.R. Counsel is not guaranteed to be effective assistance, the testimony elicited from Mr. Jones under oath should be challenged because the P.C.R. Court found Mr. Jones testimony was clear, thorough, consistent and credible. In contrast, the Court found Petitioner's was not credible and entirely self-serving. The Court should easily be able to determine the presumption of correctness belongs to the petitioner and he is actually innocent in this matter and relief should be granted.

8C

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