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Mar 14 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

TERRANCE G. ADAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000242

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the circuit court erred in denying Petitioner's motion to appoint an evidence custodian and in dismissing Petitioner's application for DNA where the procedural requirements of S.C. Code Ann. §17-28-50 were not met?

STATEMENT OF THE CASE

On April 19, 2005, UPS driver Asia Ferguson was delivering packages at the Hunt Club Village Apartments when he noticed a man walking toward him along the side of one of the buildings. The man stopped when he saw Ferguson and then went behind the building, behavior that Ferguson found suspicious. Ferguson was aware that there had been a number of burglaries at the complex, so he informed the maintenance man, Rufus Keys, of the individual he had noticed acting suspiciously. App. 90, l. 19-App. 96, l. 19; App. 102, ll. 19-24. After speaking with Ferguson, Keys went to the building where the man had been seen and noticed that four apartment doors had been forced open. App. 109, l. 7-App. 110, l. 3. Shortly thereafter the two men rode around the area to see if they could locate the man Ferguson had seen. About a half of a block from the apartment complex Ferguson saw the man sitting in front of a local convenience store called the Food Fair. The man had two bags, one on either side of him. App. 97, l. 24-App. 99, l. 25; App. 134, ll. 13-14.

Investigator Dale Hunt, the officer assigned to the other burglary cases that had occurred at the Hunt Club Village complex, was called by the apartment manager. He responded to the scene and was informed that a possible suspect in the burglaries from that morning was at the Food Fair. He had Keys ride with him to the Food Fair and identify the man that had been acting suspiciously. Hunt approached the subject, identified himself as law enforcement, and requested the man's identification. The man refused to provide any identification and when asked about the bags on either side of him said they were not his. Hunt noticed that the man had bulges in both of his front pockets, so he decided to detain him while investigating the man's potential involvement with the burglaries. As Hunt went to place him in handcuffs, the man reached for his pocket and a struggle ensued. Eventually the man was detained and a knife, along with a

screwdriver, latex gloves, the credit car of one of the burglary victims, and various jewelry was removed from his front pockets. The screwdriver and jewelry turned out to belong to various victims of that morning's break-ins and the items in the bags were also identified as belonging to the various victims. The man was arrested and eventually identified as Petitioner. App.131, l. 14-App. 142, l. 22; App. 144, l. 14-App. 147, l. 11.

Petitioner was indicted during the July 2005 term of the Richland County grand jury for six counts of burglary first degree.¹ App. 317-328. The State, represented by Richard Cathcart and Margaret Fent, called the case to trial before the Honorable James W. Johnson and a jury on January 30, 2006. Petitioner was represented by Lauren Mobley and Tivis Sutherland. App. 1. After a three-day trial Petitioner was found guilty as indicted and sentenced to life in prison without the possibility of parole.² App. 300, l. 15-App. 302, l. 5; App. 314-315; App. 329-334.

At trial the State entered four pieces of physical evidence: a knife, latex gloves, and two screwdrivers. App. 4. All of the property that was stolen during the burglaries and found in Petitioner's possession was returned to the rightful owners. At trial the State relied solely on photographs of the stolen items. App. 149-161. Additionally, no fingerprints, DNA, or other forensic evidence was recovered from any of the burglarized homes. App. 198, ll. 2-15.

On May 26, 2016, Petitioner filed an application for post-conviction DNA testing. App. 335-339. The State filed a response to the application on August 19, 2016. App. 340-343. DNA Counsel Jonathan Waller filed a motion to appoint an evidence custodian pursuant to S.C. Code Ann. §17-28-70 on November 2, 2022. App. 344-345. A hearing on the motion was held on

¹ Petitioner was also indicted for various counts of larceny, possession of burglary tools, and resisting arrest. Petitioner did not challenge these charges in his DNA Act application. App. 7, ll. 2-9; App. 335.

² Petitioner and defense counsel were served with the State's intent to seek life without parole on January 9, 2006. App. 7, ll. 11-24.

November 30, 2022, before the Honorable DeAndrea G. Benjamin. The State was represented by April Sampson and Petitioner was represented by Counsel Waller. App. 346-347.

At the hearing the State informed Judge Benjamin that law enforcement had confirmed that all the evidence in the case had been destroyed once the case had gone through the appeal and PCR processes. The Clerk of Court confirmed that the only evidence in its possession were photographs and two screwdrivers which had not been subject to chain of custody since Petitioner's trial. App. 349, l. 14-App. 350, l. 5; App. 356, l. 3-App. 357, l. 22. Counsel Waller argued that pursuant to S.C. Code Ann. § 17-28-70 the court needed to appoint a custodian of evidence to do a search and confirm that there was no evidence that could be tested for DNA. App. 350, l. 7-App. 351, l. 1. The court declined to appoint an evidence custodian finding that there was not any evidence left that could be tested. In finding that no evidence existed to be tested, the court dismissed Petitioner's application. App. 357, l. 11-App. 358, l. 18. An order of dismissal was filed on January 20, 2023. App. 361-363.

ARGUMENT

The circuit court erred in denying Petitioner's motion to appoint an evidence custodian and in dismissing Petitioner's application for DNA where the procedural requirements of S.C. Code Ann. §17-28-50 were not met.

The DNA Act places specific duties upon the State, the circuit court, and the custodian of evidence upon receipt of an application for DNA-testing to preserve and inventory the evidence in the case. There is nothing in the record that shows these duties were met prior to the denial of Petitioner's application. S.C. Code Ann. §17-28-50 requires the Solicitor to notify the custodian of the evidence that an application for DNA testing has been filed so that the evidence will be preserved. Similarly, S.C. Code Ann. §17-28-70 requires the circuit court to order the custodian of evidence to preserve all physical evidence and biological material related to an applicant's conviction. Section 17-28-70 further requires that the custodian of the evidence prepare a written inventory for the parties of the physical evidence and biological material related to the case.

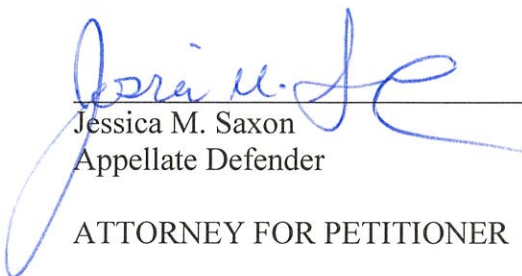
When a custodian of evidence asserts that physical evidence or biological material has been lost or destroyed, the court shall order the custodian of evidence "to locate and provide the applicant and the solicitor or Attorney General, as applicable, with a copy of any document, note, log, or report relating to the physical evidence or biological material." S.C. Code Ann. 17-28-70(C). Additionally, "[i]f no physical evidence or biological material is discovered, the court may order a custodian of evidence, in collaboration with law enforcement, to search physical evidence and biological material in the custodian of evidence's possession that would reasonably be expected to produce relevant physical evidence or biological material." S.C. Code Ann. 17-28-70(D). Importantly, the language used by the legislature in S.C. Code Ann. §§17-28-70(A)-

(C) is mandatory, not permissive. There is an affirmative duty placed upon the State, the court, and the evidence custodian to compile the relevant information and produce it for the applicant.

In Petitioner's case the State asserted that no physical evidence was left to test, however no inventory of evidence was prepared nor was any documentation or report relating to the destruction of the evidence offered. While the Clerk of Court confirmed that the physical items in its possession were not subject to chain of custody, no one from law enforcement was present with any proof showing what the evidence in the case was or had been, how it was maintained, and if and when it was destroyed. The failure of the State to meet the statutory requirements set forth in S.C. Code Ann. § 17-28-70 should have prohibited the dismissal of Petitioner's application and the court should have appointed an evidence custodian to complete a search pursuant to the statute.

CONCLUSION

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



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of March, 2024.

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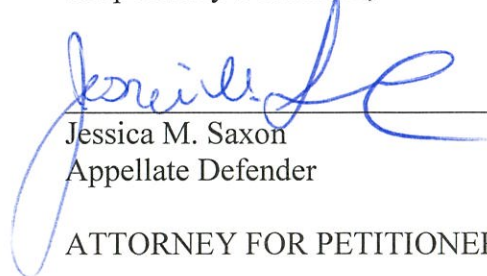
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terrance G. Adams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge DeAndrea G. Benjamin, which was held on November 30, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Terrance G. Adams.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of March, 2024.

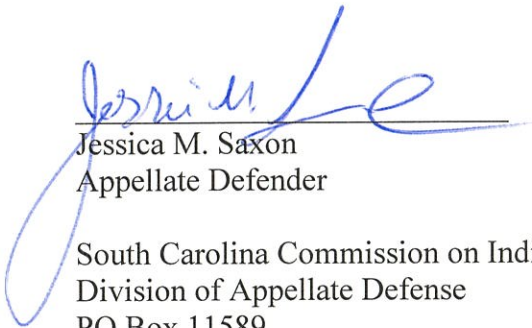
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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Appellate Defender

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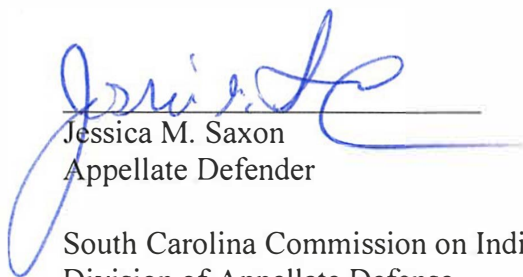
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000242

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Johnson Petition for Writ of Certiorari and Appendix in the above-referenced case have been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Terrance G. Adams, #229165, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 14th day of March, 2024.



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Appellate Defender

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From: [Stock, Chris](#)
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Cc: [Saxon, Jessica](#)
Subject: Adams, Terrance - Johnson petition for writ of certiorari and Appendix - 2023-000242
Date: Thursday, March 14, 2024 11:00:41 AM
Attachments: [Adams, Terrance - Appendix - 2023-000242.pdf](#)
[Adams, Terrance - Johnson petition for writ of certiorari - 2023-000242.pdf](#)
[Adams, Terrance - Johnson petition for writ of certiorari - 2023-000242 - AG Cover Letter.pdf](#)

Mr. Farthing,

Please find attached for service the Johnson Petition for Writ of Certiorari and Appendix for Terrance Adams' DNA appeal which will be filed with the Court of Appeals today.

If you have any questions, please let me know.

Thank you,

Chris Stock
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(803) 734-1330