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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to Richland County
Honorable Reginald I. Lloyd, Trial Judge
Honorable Deadra L. Jefferson, Post-Conviction Relief Judge

Appellate Case No. 2023-001857

Carmen L. Rice, #308637,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner Carmen L. Rice is presently confined in the South Carolina Department of Corrections. During its October 2004 term, the Richland County Grand Jury indicted Petitioner for armed robbery (2004-GS-40-8755) and murder (2004-GS-40-8754). John T. Mobley, Esquire, and Christopher R. Hart, Esquire, represented Petitioner.

On April 4–8, 2005, Petitioner proceeded to a jury trial before the Honorable Reginald I. Lloyd, circuit court judge. The jury convicted Petitioner as indicted. Judge Lloyd sentenced Petitioner to concurrent terms of imprisonment for thirty years for armed robbery and life without parole for murder.

Petitioner sought direct appellate review and was represented by Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who raised the following allegations in his brief

I. Whether the Court erred by refusing to allow defense witnesses Alana Quattlebaum to testify that co-defendant Iris Bryant told her in jail that Nikki was with her when the decedent was killed, and that Nikki shot the decedent, since Bryant on a prior occasion told the police Nikki was present, and Bryant later testified that admission was a lie, and she denied at trial making this statement to Quattlebaum, since this was an admissible prior inconsistent statement, and the judge's reason for excluding it as evidence of third-party guilt was also erroneous?
II. Whether the Court erred by allowing Investigator Smith to testify he was told by another law enforcement official that appellant did not want to submit to her fingerprints being taken, since this testimony was hearsay and was very prejudicial?
III. Whether the Court erred by allowing waitress Heidi Feagin to make and in-court identification of appellant, where she previously was not only unable to identify appellant, she also misidentified two other women in the photo array, since the judge erroneously ruled appellant opened the door to this unreliable in-court identification by cross-examining Feagin?
IV. Whether the Court erred by admitting records and the attendant testimony from the security company where appellant was employed under the business records exception, since the records were not "trustworthy" within the meaning of Rule 803(6), SCRE, where the company went bankrupt and the custodian

of the records and other evidence indicated that the poor bookkeeping made it possible for thirty-three guns not to be accounted for, including one the state strongly insinuated belonged to appellant, and the probative value of this "bad employment acts" and gun evidence was also outweighed by its unduly prejudicial effect under Rule 403, SCRE?

V. Whether the Court erred by refusing to give a curative instruction where the solicitor argued that the jury should convict appellant to give decedent's wife and the decedent justice, since this was an improper appeal to the sympathy and passion of the jury?

The South Carolina Court of Appeals affirmed Petitioner's convictions and sentences by published opinion. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (cert. denied December 4, 2008). The Remittitur was returned to the lower court on December 8, 2008.

First PCR Action and Subsequent Appeal: 2009-CP-40-0234

Petitioner sought post-conviction relief by filing her first *pro se* application on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. "Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"
7. "The attorney did not provide the Defendant a complete Motion of Discovery and Brady with all favorable material in accordance to Maryland v. Brady . . . with sufficient time to prepare rebuttal."
8. "The attorney did not insist on the suppression of incredible witnesses statement or testimony."
9. "The Defendant was charged and convicted on hearsay of witnesses in a case of four (4) years old whereas witnesses in her behalf nor she could recall evidence or whereabouts."
10. "No tangible evidence was presented at the trial."
11. "Witness for the prosecution did not pick the Defendant out of any lineup, however pick out the prosecution chief witness."
12. "The Defendant Miranda Rights was not given to her during the time of the investigator's questioning. The Defendant was given false information as to why she was being questioned at the beginning of interrogation by investigators who came to the Defendant's home."
13. "All witnesses for the prosecution was in jail/detention/and or prison and was coerced into testifying."
14. "The Rule of Evidence 708 was violated . . . at the trial."

An evidentiary hearing was convened before the Honorable James R. Barber, III, on June 6, 2011. Mark Schnee, Esquire, represented Petitioner. Petitioner testified on her behalf and testimony was taken from John T. Mobley, Esquire, Arletta Frierson, and LaShawn Roberts. On August 22, 2011, Judge Barber issued the Order of Dismissal denying Petitioner's application for post-conviction relief.

Petitioner sought appellate review, and Appellate Defender Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, raised the following issues:

I. Did the PCR judge erroneously find that the statement of Arletta Frierson that Iris Bryant the co-defendant and the State's main witness at trial, told her that the petitioner had nothing to do with the murder of Bernard Brennan was inadmissible hearsay when the statement of Frierson was admissible as impeachment testimony not hearsay pursuant to Rule 801(d)(1)?

II. In finding that the statement of Arletta Frierson was inadmissible, did the PCR judge err in failing to make findings of fact and conclusion of law as to allegation that trial counsel was ineffective for failing to call Arletta Frierson as a witness at trial to testify that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with murder of Bernard Brennan?

III. Did the PCR judge err in refusing to make findings of fact and conclusions of law as to the allegations that the testimony of La Shawn Roberts that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with the murder of Bernard Brennan constituted newly discovered evidence?

On May 21, 2014, the South Carolina Court of Appeals granted certiorari. On April 5, 2015, the South Carolina Court of Appeals affirmed the denial of post-conviction relief by unpublished order. State v. Rice, Op. No. 2015-UP-191 (Ct. App. filed April 8, 2015) (cert. denied November 4, 2015). The Remittitur was returned to the lower court on November 9, 2016.

PETITION FOR WRIT OF HABEAS CORPUS: 2:16 –2610-RBH-MGB

Thereafter, Petitioner filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016, with the following grounds for relief:

1. Ineffective Assistance of Counsel
    a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
    a. They had DNA and fingerprints, but none matched mine.
    b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.
    a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject (me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

On March 27, 2017, Petitioner filed a notarized letter written by SCDC inmate #299956, Holly Jo Thompson. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's Motion for Summary Judgment be granted and Petitioner's petition be denied. On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Petitioner's petition.

Second PCR Action: 2017-CP-40-06361

Petitioner filed her second post-conviction relief application on October 18, 2017, in which she alleged she was being held in custody unlawfully for the following reasons:

1. "Appeal Counsel's ineffective representation"
    a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such an issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure (sic) Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting the action be summarily dismissed as procedurally barred by the statute of limitations and the presumption against a successive post-conviction relief action. The Honorable Jocelyn Newman, Chief Administrative Judge for the Fifth Judicial Circuit, issued a Conditional Order of Dismissal on May 22, 2019. Petitioner filed her Opposition to the Conditional Order of Dismissal on June 18, 2019, wherein she included a letter purportedly written by SCDC inmate #299956 Holly Jo Thompson with no date and another letter purportedly from Stacie Earle dated November 22, 2016.

On July 1, 2019, Judge Newman issued an Order of Partial Dismissal, finding "[Petitioner's] allegations of general ineffective representation (numbered 1 above), the judge's failure to ensure fairness (numbered 2 above), and the violation of her constitutional rights (a portion of number 3 above), the Court finds that [Petitioner] has failed to show sufficient reason why the Conditional Order of Dismissal should not become final." (App. p. 1203). However, after reviewing Petitioner's supplement to the application, Judge Newman granted an evidentiary hearing regarding the allegation of newly discovered evidence *only*.

On March 21, 2023, Petitioner, through counsel, filed a First Amended Post-Conviction Relief Application and alleged the following:

1. Brady[1] Violation
    a. "The State violated Rice's rights under the US and South Carolina Constitutions by failing to turn over to the defense the attached statements of witnesses, and the failure to turn over those statements prejudiced Rice's defense."

Attached to the application were statements from Nathaniel Hallman dated July 13, 2003, July 14, 2003, October 27, 2003, and Lamont Bostick (Isaac) dated August 1, 2003. On July 10, 2023,

[1] Brady v. Maryland, 373 U.S. 83 (1963).

Petitioner filed her Second Amended Post-Conviction Relief Application with the following allegations:

1. Ineffective Assistance of Counsel and Prosecutorial Misconduct By Suppression of Exculpatory Evidence in Violation of Applicant's Due Process Rights
    a. "November 2003-2005 Rice defense trial attorney John Mobley and Chis Hart failed to raise the exculpatory material; ineffective assistance of counsel"
    b. "In 2007 rice is represented by attorney Robert Dudek, appointed by appeals court; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
    c. "2009-2011 Rice first PCR she was represented by attorney Mark Schnee, appointed by indigent commission; he failed to raise the exculpatory statement, ineffective assistance of counsel,"
    d. "2015 Rice is represented by attorney Katerine Hudgins, indigent commission, writ of certiorari; she failed to raise the exculpatory statement; ineffective assistance of counsel,"
    e. "2017 Rice is represented by Katerine Hudgins attorney appointed by indigent commission, habeas corpus; she failed to raise the exculpatory material; ineffective assistance of counsel,"
    f. "2019 Rice is represented by Gregory Collins, appointed by indigent commission, PCR; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
    g. "2021 Rice is represented by Art Aiken, appointed by indigent commissions, PCR; attorney Aiken amended Rice's PCR application to include exculpatory materials but he failed to raise in the PCR application
    h. "INEFFECTIVE ASSISTANCE OF COUNSEL outlining the above chronological order of ineffective assistance of counsel starting with Rice defense-trial attorneys. Rice denied of her constitutional Sixth Amendment right to effective assistance of counsel has been deny to this very day."
2. Newly Discovered Evidence
    a. "Rice defense trail attorneys failed to disclosed exculpatory material to her. The exculpatory statements are new discovered evidence to Rice. She were made aware of them in October 2022."
3. Trial Counsel Failed to Call Witnesses
    a. "Rice defense trial attorneys failed to called the witnesses in the exculpatory material;they should have called Nathaniel Hallman, Lamont Bostics, Renee Bostics, Rita Bostics ,Alexander Sharpe and Troy Stevenson"
4. Trial Counsel Failed to Request DNA Samples of Other People

a. "Rice defense trial attorney should have requested that Iris Bryant and her cousin Tika Bethel(aka Nikki, Tina) be tested DNA/Forensic since there were DNA in the front and back sit as the court trial transcript stated."

5. Trial Counsel Failed to Properly Cross-Examine Alton Page
   a. "Rice defense trial attorney should have question more in depth of Alton Page the witness in the pool hall that was shooting pool with the victim. The defense attorney asked Mr. Page how tall was the two females. The trial court record will reflect that Mr. Page stated that the two females were a few inches shorter than him. He stated that he was 5'9. That would bring the two females in the ranges of 5'7 or 5'6. Rice is 4'11."

An evidentiary hearing convened on July 17, 2023, before the Honorable Deadra L. Jefferson. Following the hearing, the post-conviction relief court denied relief and dismissed the application with prejudice by order filed November 15, 2023. In the Order of Dismissal, the post-conviction relief court found Petitioner failed to meet her burden, and the evidence presented did not constitute newly discovered evidence. (App. p. 1327).

STATEMENT OF THE FACTS

On October 25th, 2001, Bernard Brennan and his friend Alton Page played pool at the "Varsity" in Columbia. While there, Brennan received a call from an acquaintance, Petitioner. Brennan invited Petitioner and her friend Iris Bryant (Bryant) to join him. The two women met Brennan at the Varsity. Brennan flashed a wad of cash that night, telling another man he "didn't have nothing but hundreds on him." (App. pp. 282–291; 512; 524).

Brennan and the two women left Varsity and got a bite to eat at Calloway's. (App. p. 512). The three left Calloway's. Unbeknownst to Brennan, Petitioner and Bryant had planned to rob him of his money beforehand. Bryant thought the plan was to lure Brennan to a hotel room, spike a drink, and take his money while he slept. (App. 523–525).

The trio drove to an isolated section of Richland County. Petitioner, who was issued a .357 Magnum as part of her job as a security guard, pulled out a gun and demanded that Brennan stop the car. The women exited the car, and Petitioner shot Brennan five times in the back. Petitioner wiped the car down and took Brennan's wallet. Petitioner and Bryant then fled the scene. Before entering her house, Petitioner went behind a restaurant near her home and took off a wig she was wearing. Petitioner also removed her outer clothes and revealed she was wearing more clothes underneath. Petitioner threw the wig and outer clothes into an oil container and walked home. (App. pp. 516–521; 676–677; 698; 902–912).

Soon after the murder, Petitioner left for Florida and lived with a friend for a few weeks. At a later point, Petitioner wrote her friend, Sarah Dennis, a letter asking Dennis to falsely provide an alibi for the date of the murder. (App. pp. 713–721).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly denied Petitioner a new trial based on newly discovered evidence where the post-conviction relief court found (1) Holly Jo Thompson's letter failed the first and fifth Clark factors and (2) Stacie Earle's letter was inadmissible pursuant to Rule 802, SCRE, and Rule 901, SCRE.

On appeal, Petitioner asserts the post-conviction relief court erred in failing to conduct a full and complete post-conviction relief hearing on the entirety of Petitioner's newly discovered evidence. Specifically, Petitioner concedes the letter written by Holly Jo Thompson (Thompson) was reviewed by the post-conviction relief court pursuant to Clark[2], but Stacie Earle's (Earle) letter was not reviewed by the post-conviction relief court pursuant to Clark. However, as the post-conviction relief court properly found, Thompson's letter failed the first and fifth Clark factors, and Earle's letter was inadmissible based on authentication pursuant to Rule 901, SCRE, and hearsay pursuant to Rule 802, SCRE. For this reason, the post-conviction relief court was not required to review the Earle letter under Clark because it constituted inadmissible evidence at the hearing. Accordingly, the post-conviction relief court properly found Petitioner failed to establish the requisite burden of proof to her claim of newly discovered evidence and this Court should deny certiorari.

To obtain a new trial based on newly or after discovered evidence under S.C. Code Ann. § 17-27-20(A)(4), a PCR applicant must show the following evidence:

1. would probably change the result if a new trial is had;
2. has been discovered since the trial;
3. could not have been discovered before trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

[2] Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))); see, also, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

The "credibility of newly-discovered evidence . . . is a matter for determination by the circuit judge to whom it is offered." State v. Mayfield, 235 S.C. 11, 34, 109 S.E.2d 716, 729 (1959); Harris, 391 S.C. at 544–45, 706 S.E.2d at 529 ("The credibility of newly-discovered evidence is for the trial court to determine."); see, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.").

As an initial matter, Petitioner concedes that the post-conviction relief court properly considered the Thompson letter pursuant to Clark. (PWC p. 6). Thompson testified at the hearing that she wrote the letter about seven and a half years ago. (App. p. 1266). Petitioner testified at the hearing that Thompson placed the letter in her hand about seven years ago. (App. p. 1269). Petitioner testified that Thompson wrote a letter for the sheriff's department that she had in her discovery. (App. p. 1277).

The post-conviction relief court ultimately found that:

> "even if the [Thompson] letters were not available to Applicant before or at the time of trial —or at her first PCR action—and this PCR action was timely filed with Thompson's letter—the letter is immaterial, conclusory in nature lacking substantiation, merely purporting to impeach a State's witness, and would not change the result if Applicant was granted a new trial."

(App. p. 1325). The post-conviction relief court went on to find that even if a new trial were granted, Thompson would have been limited to her testimony as the contents of the letter were inadmissible hearsay. (App. p. 1325). In consideration of the Clark factors, the post-conviction relief court found:

> Thompson's testimony would not have changed the result of the trial, is not material to guilt or innocence, and at best would have merely been used for impeachment purposes. Thompson's letter is tangentially associated with Applicant's guilt or innocence. Evidence that merely impeaches a witness's credibility does not constitute material evidence of a defendant's guilt or innocence.

(App. p. 1326).

In summary, the post-conviction relief court correctly found that Thompson's letter failed the Clark factors one, four, and five. See Clark, *supra*; see also Connolly, *supra*. Thus, this Court should deny certiorari.

Next, Petitioner contends the Earle letter contains exculpatory matter that qualifies as newly discovered evidence, and the post-conviction relief court did not review it pursuant to Clark. Petitioner further exclaims that because the post-conviction relief court did not conduct a "complete assessment" of the Earle letter, the "better course of action would have been to continue the PCR case or hold the PCR open until Stacie Earle was available to testify in the matter." (PWC p. 6).

However, Petitioner glosses over the fact that the post-conviction relief court had the Bailiff locate and bring to the courtroom a South Carolina Department of Probation, Parole, and Pardon

Officer (SCDPPP Officer)[3]. The post-conviction relief court questioned the SCDPPP Officer regarding the contact information for Earle that the agency had on record. The SCDPPP Officer provided that Earle was on probation out of Sumter, but she had absconded, and there was "no updated record showing an address or any other way to communicate with Ms. Earle." (App. p. 1268). The SCDPPP Officer also provided that they had an address in Columbia, but they had not had any success in finding her there. (App. pp. 1268–1269). Clearly, the post-conviction relief court went above and beyond the expectations of the court as it is Petitioner's case, and she bears the burden, not the court. Thus, any argument that the post-conviction relief court had a duty to continue the case or hold the case open to find a witness that Petitioner failed to produce is unreasonable. Moreover, the likelihood of finding Earle and producing her in court when she has a warrant for absconding with SCDPPP is also unreasonable.

Turning to the exculpatory nature of the Earle letter, curiously, Petitioner seemingly suggests the post-conviction relief court should forgo the rules of evidence and must assess any evidence presented to it pursuant to Clark. Assuming, *arguendo*, that Petitioner is correct that the Rules of Evidence are formalities easily set aside in newly discovered cases, Respondent still cannot ascertain the exculpatory nature of the Earle letter, nor did Petitioner expound on her reasoning as to how the Earle letter was exculpatory. The Earle letter reads as follows: [verbatim]

> "I was incarcerated from 1998-2000 at the Gadsen Corr. Inst. in Quincy, FL. I've never known Ms. Rice although I was approached by 2 detectives concerning her case which I have no knowledge of. I was told to sign a paper that I did not understand. I never wrote anything but only stated clearly that I did not know her. I was informed that if I did not sign the paperwork with my signature that I would be charged with withholding state's evidence to a capital crime and supenoed [sic] to Judicial Court. During her crime I was imprisoned in the state of Florida."

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[3] During the post-conviction relief hearing, it was discovered that Earle had been on probation.

(App. p. 1307).[4]

A rational and reasonable reading of the Earle letter provides that there is nothing exculpatory about it. See State v. Hutton, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) (citing State v. Jarrell, 350 S.C. 90, 107, 564 S.E.2d 362, 372 (Ct. App. 2002) ("Exculpatory evidence is evidence which creates a reasonable doubt about the defendant's guilt."). The Earle letter provides that Earle allegedly signed something against Petitioner but that something is not within the record before this Court or any other court presiding over Petitioner's prior proceedings.[5] Further, the post-conviction relief court properly found that assuming *arguendo* Earle was present to testify about the letter, the contents of the letter were hearsay and inadmissible.[6] (App. p. 1327). In support of its finding, the post-conviction relief court quoted Bannister where this Court "has 'repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or *otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing' in order to prevail on this type of claim." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); (App. p. 1327).

Lastly, while Petitioner argues that the post-conviction relief court erred in not applying the Clark factors to the Earle letter, the record before this Court provides that the post-conviction relief court sustained the State's objection to the Earle letter pursuant to Rules 802 and 901, SCRE. (App. pp. 1269–1271). The post-conviction relief court had no duty, and Petitioner has provided no case law to substantiate the claim that the post-conviction relief court was required to apply the

[4] Contrary to Petitioner's assertion, Earle's letter is devoid of any revelation that Petitioner "had been done wrong." (PWC p. 5). Nevertheless, even if Earle's letter did contain that Petitioner "had been done wrong," Respondent asserts that is not exculpatory evidence.
[5] Respondent further notes that Stacie Earle did not testify in Petitioner's trial, nor was anything introduced at trial from or regarding Stacie Earle.
[6] The post-conviction relief court also noted that Petitioner did not provide the court with the original letter or a copy of the affidavit. (App. p. 1319).

Clark factors to inadmissible evidence. To the contrary, this Court's jurisprudence is clear: the evidence must be offered "in accordance with the rules of evidence at the PCR hearing . . . ." See Bannister, *supra*.

Accordingly, the post-conviction relief court properly found Petitioner failed to establish the requisite burden of proof to her claim of newly discovered evidence, and even if it were newly discovered evidence, "it was immaterial to [Petitioner's] guilt or innocence, and would not change the result if [Petitioner] was granted a new trial." (App. p. 1327). Therefore, this Court should deny certiorari.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of a new trial based on newly discovered evidence. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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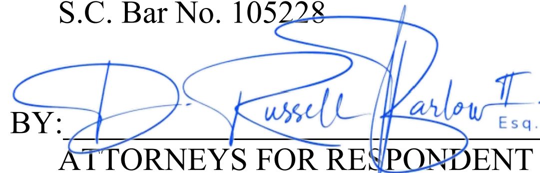

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