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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Richland County

J. Michelle Childs, Circuit Court Judge

FRANCIS O. CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I.

The second PCR judge erred in denying petitioner's request for relief per his newly discovered evidence claim, which was supported via the testimony of John Jeffrey McDonald, who was not present at the prior PCR action, but nonetheless appeared at the second PCR hearing and provided the sufficient corroboration needed to establish proof of the "Dinky did it" murder theory of the case.

II.

The second PCR judge erred in denying petitioner's request for a new trial due to a Brady violation that occurred in the case because the solicitor was privy to information in the form of communications with McDonald that corroborated the "Dinky did it" murder theory, but failed to disclose this information to defense counsel prior to trial.

STATEMENT

Petitioner Francis Owens Campbell was convicted of murder per jury trial held during the March 1982 term of the Richland County General Sessions Court before Judge Howard Ballenger. Petitioner was sentenced to life imprisonment. App. 1-671. Petitioner was represented at trial by Venable Vermont, and Assistant Attorney Generals Bufort Mabry and Scott Elliott prosecuted the case. Petitioner appealed, but his conviction and sentence were affirmed. App. 673-693. See State v. Campbell, Memo Op. No. 83-MO-283 (S.C. Nov. 8, 1983). App. 694. Petitioner was represented on appeal by Tara D. Shurling.

On November 20, 1985, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 695-701. The State filed a return on February 24, 1986. App. 705-711. Evidentiary hearings were held on February 25, 1987, and July 27, 1987, at the Richland County Courthouse before Judge Owens T. Cobb, Junior. App. 699-869. On October 10, 1987, Judge Cobb issued an Order of Dismissal in the case. App. 870-877. Petitioner was represented at the first PCR hearing Michael J. Thompson. Petitioner appealed, but his petition for writ of certiorari was denied.

On January 18, 2006, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 879-885. A hearing was convened on April 12, 2010, at the Richland County Courthouse before Judge J. Michelle Childs. App. 925-994. On June 17, 2010, Judge Childs issued an order granting petitioner a new trial. App. 995-1012. On July 1, 2010, the respondent filed a Rule 59(e) motion. App. 1013-1022. On August 19, 2010, Judge Childs issued an order rescinding the prior order and denying PCR to petitioner. App. 1023-1039. Petitioner was represented at his second PCR hearing by Tricia Blanchette. Petitioner appealed the order.

ARGUMENT I

The PCR court erred in denying petitioner's request for relief per his newly discovered evidence claim, which was supported via the testimony of John Jeffrey McDonald, who was not present at the prior PCR action, but nonetheless appeared at the second PCR hearing and provided the sufficient corroboration needed to establish finally the "Dinky did it" theory of the case.

At trial, James Owens testified that on the night of July 10, 1978, he and petitioner picked up buckshots at Deloris' house and went out night hunting in the Sumter Highway and Leesburg Road areas of Richland County. Owens stated that petitioner was driving on that night. Also, Owens stated that at some point during the night, petitioner stated that he saw a deer and exited the car. Owens stated that he remained seated in the car after petitioner departed. Then, Owens stated that he heard two shotgun blasts minutes later, and soon thereafter, he saw a truck roll across the highway. Owens stated that the truck contained a dead man. Later, petitioner returned to the car and they fled. App. 94, l.3 – p. 120, l. 6. Investigator Joe Blaire Castles testified that he found Olin Wilson dead from buckshot wounds to his face and viewed his body slumped over inside his truck, was located at Harmon and Leesburg Roads. App. 53, l. 24 – p. 93, l. 17.

Investigator Connie Lewis testified that he believed petitioner knew something about the Wilson murder, so he interviewed and obtained a statement from petitioner. App. 267, l. 15 - p. 275, l. 12. In the statement, petitioner revealed that he was in the Harmon Road area after 10:00 p.m. on July 10, 1978, and saw Olin Wilson's truck run off the road and hit a tree. Petitioner stated that Olin Wilson was dead inside the truck. Petitioner added that before this happened, he heard "one gunshot and [then] saw a white male running with a shot gun in his hand toward 601 Highway on Leesburg Road, and [that] the white male stood 5' 10" or 5' 11," [had] dark brown hair, and was

37-40 years old." Petitioner stated that he saw this same man who was running in the woods with the gun on July 10, 1978, at Ann Wilson's house at a later date asking for money. App. 341, l. 16 – p. 349, l. 25. Petitioner implied that Ann bought him things (jewelry and motorcycles) in order to keep him quiet about what he knew. App. 349, ll. 2-17. At the close of the case, petitioner was convicted of murder.

At the second PCR action from whence this appeal emanated, petitioner presented newly discovered evidence establishing corroborative information from McDonald that gave rise to reasonable doubt as to whether he (petitioner) was the murderer. This newly discovered evidence was the testimony of John Jeffrey McDonald where he stated that Dinky, properly know as Donald Evan Taylor, told him (McDonald) that he (Dinky) and Pam killed Olin Wilson. McDonald stated that he gave this information to Investigator Lewis prior to the trial. App. 969, l. 1- p. 974, l. 10. Unfortunately, neither Investigator Lewis nor the solicitor revealed this information to neither petitioner nor his counsel at the time of trial, or after the trial, or at the first PCR hearing held in the case. App. 969, l. 1 – p. 974, l. 10. Note that McDonald was absent from the first PCR hearing in the case.

Also, Ronald Wilson testified at the second PCR hearing and admitted that Johnny Bradwell told him that Dinky shot Wilson, and that he (Ronald Wilson) conveyed this information to law enforcement. In addition, Wilson stated at the second PCR hearing that Ronald Blizzard told him that Dinky shot Wilson. App. 975, l. 9 – p. 978, l. 18; App. 979, l. 1 – p. 980, l. 5. Apparently, Investigator Lewis did not relay Wilson's information to neither petitioner nor his trial counsel prior to trial. Note that Ronald Wilson testified at petitioner's first PCR hearing, but failed to mention his

knowledge of information verifying that Dinky committed the murder at issue. App. 768, l. 11 – p. 774, l. 11.

Petitioner testified at the second PCR hearing and explained that law enforcement withheld this "Dinky did it" evidence and asserted that this can now be considered newly discovered evidence via McDonald's testimony from the second PCR hearing because McDonald's testimony would corroborate the "Dinky did it" murder theory. App. 936, l. 1-5. Petitioner testified that Ronald Wilson (the deceased's brother) testified at the second PCR hearing and claimed that Johnny Bradwell gave a statement naming Dinky as Olin Wilson's murderer, and that Lt. Lewis was informed of this, but apparently there was no corroborating evidence per Lewis' receipt of the information to support the Dinky claim. App. 946, l. 24 – p. 948, l. 25. Note that petitioner knew that Dinky had broken into his (petitioner's) sister's house and stole her guns, one of which was presumably used to kill the deceased. App. 951, l. 24 – p. 952, l. 7. Also, petitioner testified that Johnny Bradwell told him that he was there when Dinky killed Wilson, and that Pam Cassidy and Richard were present at the killing as well. App. 952, l. 8 – p. 953, l. 6. Bradwell was under subpoena for both PCR hearings, but could not be located for either of the two PCR hearings. App. 953, ll. 13-24.

The first PCR judge denied petitioner's newly discovered evidence claim because neither Dinky Taylor nor Johnny Bradwell were called as witnesses at the PCR (first) hearing. App. 870-877. Although Bradwell was and is the most elusive witness ever and who still cannot yet be found; nonetheless, McDonald revealed what Bradwell said to him regarding Dinky being the murderer. This was the next best thing to the personal appearance of Bradwell, who was not impossible to locate. App 875 – 677. The second PCR judge denied petitioner's newly discovered evidence

claim based on McDonald's testimony on the ground that McDonald could have been called at the first PCR hearing and that petitioner's trial attorney was aware of Johnny Bradwell's statement made to police on August 7, 1980, regarding Dinky's liability as the culprit. 1028 – 1036. At the second PCR hearing counsel argued the following:

> Finally, the most important point since - - due to the age of this case, I understand that we have to have newly-discovered evidence to prevail today. I think our newly-discovered evidence is peppered thought our presentation but most importantly it was embodied in the testimony Mr. John Jeffrey McDonald.

App. 982, ll. 1-6.

Note that trial counsel did not testify at the second PCR hearing; but he testified at the first PCR hearing and acknowledged that he was aware of a statement made by Bradwell claiming that "Dinky did it," but added in effect that this was an unsuccessful lead because there was no corroboration with respect to that theory. App 838, l. 8 – p. 839,l. 18.

As a rule, after discovered evidence is evidence that would probably change the result if a new trial were granted; has been discovered since the trial; could not in the exercise of due diligence have been discovered prior to trial; is material and is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 513 S.E.2d 98. Here, the fact that Jeffrey McDonald held the relevant material and exculpatory testimony corroborating the "Dinky did it" theory was not discovered by petitioner before the trial and the first PCR hearing and could not have been discovered previously. First, remember that there was no way of knowing who Jeff [McDonald] was when referenced in his (Bradwell's) statement. Petitioner's testimony at the last PCR hearing regarding the matter follows:

Q: Now going back to this Bradwell statement, it references Jeff. And you've indicated today that it's your understanding now that that's Jeff McDonald; is that correct?
A: Yes.
Q. And in this statement Mr. Bradwell is implicating that Dinky was the one who committed this murder?
A. Yes, ma'am.
Q. Now, prior to this current PCR, did you know the identity of Jeff in this statement or have a way of locating Mr. McDonald?
A. No, ma'am.
Q. You are alleging today that his testimony is in fact newly-discovered evidence?
A. Yes, ma'am.
Q. Did you ever receive in connection with your trial or your PCR any information regarding a statement Mr. McDonald gave to law enforcement?
A. No ma'am.
Q. Did you ever discuss it with your trial counsel or PCR counsel, Mr. McDonald?
A. No, ma'am.

App. 957, l. 21 – p. 955 l. 17. Thus, this newly discovered evidence, i.e. Jeffrey McDonald's corroborative testimony, could not have been discovered prior to trial and the first PCR hearing, and has since been discovered thereafter. Also, this evidence was material, and not cumulative, and would certainly have changed the result if a new trial were held because it was sufficient corroborative evidence that would have established reasonable doubt as to whether petitioner was guilty of murder. Petitioner could not have known previously that McDonald was available and that he held the corroborating evidence that Investigator Lewis needed to corroborate his belief that someone other than petitioner, i.e. Dinky," should have been charged in the case.

McDonald's testimony at the instant PCR hearing was the corroborating evidence that put together the pieces of the puzzle from the evidence presented at trial, after the trial, and at the first PCR hearing. For example, at the first PCR hearing, Tally Wilson testified that it was Dinky, i.e., Ann Wilson's brother, who became embroiled in a fight with the deceased a few days before the

murder. Also, Tally stated that Richard Blizzard told him that Dinky murdered the deceased. App. 702, l. 20 – p. 722 l. 22. Moreover, it was revealed at the first PCR hearing that Ann Wilson's mother, who was Dinky's mother as well, threatened to get rid of the deceased. App. 702, l. – 708, l. ---. Note that Ann Wilson (the ex wife of the deceased who was back living with the deceased at the time of his murder) testified at the first PCR hearing also, and admitted in effect that she too at times wanted to get rid of the deceased, and that she was a suspect in the murder case up until the trial in the case. App. 744, lines 12 – 24; App. 942, lines 9-20. Note that Ann Wilson was the beneficiary of the money that emanated from the deceased's estate. Finally, note that Investigator Lewis had Dinky listed as a suspect as well and interviewed Dinky in the case; however, as we stated earlier, there nothing offered to corroborate this Dinky did it theory. App. 787, l. 14 – p. 801, l. 22. Alas, Lewis was deceased at the time of the second PCR hearing. Also, note that Walter Wilson testified at the first PCR hearing that he was with Johnny Bradwell when Bradwell told Investigator Lewis that Dinky did it. App. 781, l. 1-23. In addition, it was well known that Dinky moved into Ann Wilson's house after Olin Wilson's death. App. 717, lines 4-14.

Clearly, the corroboration of the "Dinky did it" theory per the testimony of Jeffrey McDonald as newly discovered evidence presented at the second PCR hearing provided the pieces of the missing puzzle that unequivocally pointed to Dinky as the murderer in the case. McDonald's corroborative testimony constituted newly discovered evidence which should warrant petitioner a new trial. Also, this action was not successive because this information was not available to have been brought out at prior to trial or prior to the PCR proceedings. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The PCR court erred in denying petitioner's request for relief due to newly discovered evidence via the corroborative testimony of Jeffrey McDonald in the case which and gave credence to and established his claim that petitioner did not commit murder, but rather," Dinky did it."

ARGUMENT II

The second PCR judge erred in denying petitioner's request for a new trial due to a Brady violation that occurred in the case because the solicitor was privy to information in the form of communications with McDonald that corroborated the "Dinky did it" murder theory, but failed to disclose this information to defense counsel prior to trial.

During the second PCR hearing, PCR counsel advanced the Brady violation and argument as follows:

> I would allege today that his (McDonald's) testimony amounts to a Brady violation. He (McDonald) said that he spoke to Mr. Lewis, gave him information implicating Dinky in this crime. Mr. Lewis stated at the last PCR that no one gave him information substantiating Dinky's involvement in the crime.
>
> The problem here is all the records have been destroyed. So I can't go back to Richland County and get his statement or the recording of his statement. But he testified here today under oath that he gave that statement and the Applicant testified that he never saw that statement.
>
> So in support of our argument regarding the Brady violation, I would just like to hand up to the Court a copy of Riddle versus Osmint and Kyles versus Whitley.
>
> We would ask that this Court see fit to finally review everything, look at all these issues that have been presented over the years, and we can see these have been presented over the years, but finally serve justice in this case and allow Mr. Francis Owens Campbell to have a new trial. He's not afraid to face that because he's proclaimed here today that he is an innocent man.

App. 982, l. 7 – p. 983, l. 3.

At the second PCR hearing, McDonald testified at the second PCR hearing that he told the state's investigator that Bradwell told him in August 1980 that Dinky killed the deceased. App. 968, l. 13 – p. 972, l. 16.

Investigator Lewis stated that he obtained a statement on August 8, 1980, from Johnny Bradwell indicating that "Dinky did it," but in effect had no other evidence to corroborate the statement. App. 947, l. 22 – p. 948, l. 8; App. 948, ll. 15-25; App. 800, ll. 8-24; App. 793, l. 21 – p. 795, l. 18. Petitioner's defense attorney testified at the first PCR hearing in effect that he was aware of Bradwell's statement indicating that "Dinky did it" before the trial, but added in effect that there was no where to go with the theory, i.e., that there was no corroboration of the same in order to present a defense at trial based on this theory. App. 838, l. 8 – p. 839, l. 18.

The PCR court did not address specifically the Brady matter in its order of dismissal. App. 1023 - 1039.

Apparently, trial counsel was not privy to the information the state's investigator received from McDonald. This was error because McDonald's information corroborating the "Dinky did it" theory could have been used to petitioner's benefit at trial had he (trial counsel) been privy to the same. For example, trial counsel would have been able to pursue this to either establish guilt of another or reasonable doubt on the state's charge of murder against petitioner. Thus, this Brady violation warranted a new trial for petitioner. See Gibson v. State, 514 S.E.2d 320 (1999), where the Court affirmed the PCR judge's decision to set aside Gibson's guilty plea and grant him a new trial based on a Brady violation. A Brady claim is properly made when there is a showing that the evidence was favorable to the accused and material to guilt, and that the same was in possession of

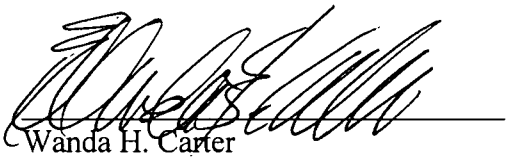
or known to the prosecution and suppressed by the prosecution. Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1985).

The second PCR judge erred in denying petitioner's request for relief due to the Brady violation that occurred in the case where the solicitor was privy to information that corroborated the "Dinky did it" murder theory, but failed to disclose this information to defense counsel prior to trial.

CONCLUSION

Based on the foregoing arguments, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of April, 2011.

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FRANCIS O. CAMPBELL,

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STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of April, 2011.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of April, 2011.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.