

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Johnny Lee Lucas, #235656,)
)
Applicant,)

Case No.: 2012-CP-08-1216

vs.)

AMENDMENT TO APPLICATION
FOR POST-CONVICTION RELIEF

State of South Carolina,)
)
Respondent.)

MAIY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2014 AUG 26 AM 10:53

FILED

**EXPLANATION AS TO WHY APPLICANT IS ENTITLED
TO A HEARING AND A BELATED APPEAL OF
HIS CONVICTIONS AND SENTENCES**

In taking guidance from the holdings in the case of Washington v. State, 478 S.E.2d 833 (S.C. 1996), the Applicant believes he is entitled to a post-conviction relief hearing and a belated appeal of his convictions and sentences because of the unique circumstances of this case. The Applicant in the Washington case was allowed to file a successive post-conviction relief application because of the procedural irregularities that occurred in his case. The South Carolina Supreme Court found that: "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice". Id. at 835.

The system has failed the Applicant in light of the missing link and the missing evidence in the "chain of custody" and the outrageous conduct of the

officials involved in this case, which will be discussed infra, and to continue his incarceration without review on a belated appeal would be a gross miscarriage of justice, because, a conspiracy existed between the Berkeley County Sheriff's Office, the Ninth Circuit Solicitor Office, the State Law Enforcement Division aka SLED, and the trial attorneys involved in this case, to convict the Applicant on an unsolved murder and burglary case in Berkeley County that allegedly occurred in that county on March 5, 1996.

The Applicant was arrested on unrelated charges in Dorchester County on April 15, 1996. Fingers and palms prints evidence introduced at trial were instrumental in convicting the Applicant in the instant case. The prosecution alleges that on April 22, 1996 the Applicant was taken to the Dorchester County Sheriff's Office to be fingerprinted. A Sgt. Earl V. Asbell, with the Dorchester County Sheriff's Office, reported that he "rolled inked impressions of the Applicant's **fingers and palms**". The report went on to say that "Captain Henerey" from the Berkeley County Sheriff's Office took **finger and palm** print cards to SLED Headquarters on April 22, 1996. See Sgt. Asbell's Report, Exhibit - A, attached.

Upon arrival at SLED, Captain Henerey only delivered **inked impression palm prints** bearing the name **Johnny Lee Lucas**, according to the SLED Laboratory Evidence Inventory Sheet. See Exhibit - B, which is the **SLED Laboratory Evidence Inventory Sheet** signed by Captain Henerey indicating that he only delivered **inked impression palm prints**.

The SLED Laboratory Evidence Inventory Sheet was also signed by Special Agent Kelvin Crimminger stating that he only received **inked impression palm prints** from Captain Henerey on April 22, 1996.

Captain Henerey's testimony concerning the delivery of the inked impressions cards to Special Agent Crimminger is both perjury and evidence of tampering. Sgt. Asbell's report states that Captain Henerey was on his way to SLED Headquarters to deliver **fingers and palms prints impressions cards bearing the name Johnny Lee Lucas**, the SLED Laboratory Evidence Sheet shows that Captain Henerey only delivered **palms impressions prints cards** to Special Agent Crimminger on April 22, 1996. The reason is unknown as to why Captain Henerey withheld the **inked impressions fingerprints cards** he allegedly received from Sgt. Asbell, but because he withheld them, that was tampering with evidence. Captain Henerey committed perjury when he testified that he turned "all" of the inked impressions cards he received from Sgt. Asbell to Special Agent Crimminger on April 22, 1996. See App. p. 162, lines 13-25 - p. 163, lines 1-10.

It was also evidence of perjury when Special Agent Crimminger testified that he used the inked impressions cards he received from Captain Henerey on April 22, 1996 to identify latent **fingerprints** allegedly found at the alleged crime scene, see App. pp. 178-179, because, it is impossible to use **inked impression palm prints** to identify latent **finger prints**.

There is no indication on the SLED Laboratory Evidence Inventory Sheet that shows that the inked impression palms prints card delivered by Captain Henerey is the same inked impression palm print card that Captain Henerey received from Sgt. Asbell, since Captain Henerey only delivered inked impression palm prints when Sgt. Asbell reported that "Captain Henerey was on his way to S.L.E.D. with the finger and palm print cards bearing the name Johnny Lee Lucas". See Sgt. Asbell's Report, Exhibit - A, attached.

Also, Special Agent Crimminger's trial testimony is inconsistent with the "Report" he filed prior to trial. In that Report he states that he made the comparison of the fingerprint evidence with **inked impression cards received from SLED Records**", also listed in Special Agent Crimminger's Report was **One (1) set palm prints bearing the name Johnny Lee Lucas**", but the Report does not state where the palm prints came from. See Special Agent Crimminger's Report, App. p. 521.,

Then there's a SLED Agent, Special Agent M. W. Heatherly, who filed a "Report", dated May 28, 1996, in this matter stating on page 4 of the Report that he had "contacted Agent Crimminger and learned that the "only" prints not identified as belonging to family members was a "partial palm print" off the crumpled check from the bedroom, a "partial palm" and fingerprint from the check book cover". See page 4 of Special Agent Heatherly's Report, attached and marked as Exhibit - C. Special Agent Crimminger's testimony or Report did not make any mention of any "partial prints" being found in this case.

Detective E. B. Ollic of the Berkeley County Sheriff's Office also filed a "Report" in this matter, dated June 1, 1996, stating on page 4 of that "Report" that "information was provided to this agency from the State Law Enforcement Division that they had obtained a print believed to be of the palm of a crumpled up check belonging to the victim's wife Pearline Cooper. This check was taken as evidence the night of the Homicide". See page 4 of Detective Ollic's Report, attached and Marked as Exhibit - D.

1. Here we have Special Agent Crimminger testifying that there were four (4) prints found at the scene.

2. Special Agent Heatherly reported that there were only three (3) prints found at the scene.
3. And Detective Ollic reporting that one (1) print was found at the scene.
4. To top it off, Captain Henerey only delivered palm prints, but Special Agent Crimminger testified that he was able to use the inked impression cards delivered by Captain Henerey to identify **fingerprints**.

Special Agent Crimminger also testified, on recross examination by Attorney Masty, that "there was one print that is still unidentified, but there were several prints in the house that identified to the family". See App. p. 190, lines 6-8.

Special Agent Crimminger's testimony indicates that the State withheld evidence of an unidentified print, because there was no indication of any unidentified prints listed in the discovery, however, if you take that "one unidentified print" in conjunction with Detective Ollic's Report stating that only one print was found at the scene, Exhibit - D, then the only conclusion that can be reached is that the only identifiable prints found at the alleged crime scene belonged to family members. Simply stated, one print found and still unidentified. Nothing to tie the Applicant to this case.

It is clear from the record that both Captain Henerey and Special Agent Crimminger testified falsely concerning the fingerprint evidence in this case. This State's high courts has found that "it is unlawful for a person to willfully give false, or incomplete testimony, under oath in any court of record, judicial, administrative or regulatory proceedings in this state". State v. Stanley, 615 S.E.2d 455 (2005). Giving false testimony at trial constitutes the felony of perjury and subjects the perjurer to a fine and/or up to five years imprisonment. Collins v. Dce, 539 S.E.2d 62 (Ct. App. 2000).

The Solicitor and both of the Applicant's trial attorneys were aware of the fact that Captain Henerey and Special Agent Crimminger were being untruthful in their testimonies and that they had tampered with evidence in this case. The Solicitor nor trial counsels did anything to correct the situation.

Captain Henerey and Special Agent Crimminger's testimonies were especially prejudicial to the Applicant's cause at trial because there was a missing link and missing evidence in the chain of custody of the inked impression cards that Sgt. Asbell allegedly gave to Captain Henerey for delivery to Special Agent Crimminger for use in identifying latent prints allegedly found at the alleged crime scene. Testimony in this case concerning the data in the inked impression cards was "hearsay" without Sgt. Asbell's testimony. See State v. Rich, 359 S.E.2d 281 (S.C. 1987).

Trial counsels raised the issue concerning the chain of custody of the inked impression cards. See App. p. 214, lines 11-25 - p. 215 , lines 1-6 and App. p. 344, lines 16-25 - p. 345 lines 1-3. Even though trial counsel raised the issue concerning the inked impression cards and preserved the issue for appellate review, they never filed a notice of appeal on behalf of the Applicant, and the South Carolina Supreme Court denied review of this case after the Applicant filed and was denied post-conviction relief. No State high court has ever reviewed the conduct of the Solicitor, Captain Henerey, Special Agent Crimminger or the trial attorneys involved in this matter.

The ultimate goal of chain of custody requirements for the admission of evidence is simply to ensure that the item is what it is purported to be. State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013). Here, there is nothing to establish the the inked impression cards that Captain Henerey received from Sgt. Asbell are the same inked impression cards used by Special

Agent Crimminger in identifying latent prints he allegedly found at the alleged crime scene.

In this case the State also presented evidence that there was (damage) a "scratch" mark on the passenger side of the "white Cadillac" that was allegedly made when the alleged victim's truck and the white Cadillac came into contact when the white Cadillac was allegedly used to push the alleged victim's truck out of its path. App. p. 115, lines 5-25 - p. 116, lines 1-9. However, the towing record for the white Cadillac when it was towed on April 15, 1996, the date of the Applicant's arrest, show that there was no scratch mark (damage) to the right, passenger side of the white Cadillac. See copy of the towing record for the white Cadillac. App. p. 527. Trial counsel was aware of document but did not present it to the jury. See App. p. 29, lines 9-25 - p. 30, lines 1-8.

Also, during the investigation of the alleged burglary and murder in this case, white paint samples were collected from the white Cadillac at issue in this case and white paint from the alleged victim's truck. The comparisons, which was made at SLED, establishes that the paint samples "do not" match. See the results of the paint samples analysis. App. p. 524-525. Trial counsels were aware of this document but never presented it to the jury. See App. p. 29, lines 9-25 - p. 30, lines 1-8.

The State also presented evidence that the alleged burglarized house was forcibly entered. See App. p. 202, lines 19-23. But the first officer, Officer Mason, to arrive on the scene on March 5, 1996, did not report any evidence of forced entry to the alleged burglarized house. See Officer Mason's Report, App. p. 528-529. Officer Mason only reported that "the screen door to the front porch had a broken handle and the porch screen to the right of the door had been torn, unknown if they had previously been in this condition".

The State also presented evidence that tire tracks were found, over a month after the alleged burglary and murder, in the yard of the alleged burglarized house, but it was established, on cross-examination, that any Pontiac, Buick, GMC or any vehicle with the same body style of the white Cadillac made between 1981 and 1989 could have left the tracks in that yard. See App. p. 135, lines 2-15 - p. 136, lines 1-17.

The trial attorneys continued with their outrageous conduct by failing to file a notice of appeal on behalf of the Applicant, they were aware of the fact that the Applicant wanted to appeal, this was evident when Attorney Masty stated at the conclusion of trial that he had prepared an "Initial Brief". See App. p. 345, lines 19-23.

The Solicitor, even though he knew the SLED Agents were being untruthful in their testimonies, to further "bolster" their credibility, the Solicitor asked the jury the following question during closing argument:

"Now, you think if there was some uncertainty, they would come in here and tell you that? They have some reason to frame Johnny Lucas with this crime". App. p. 277, lines 11-14.

Because of the injustice that has been shown in the foregoing, the Applicant believes he's entitled to have his case reviewed and heard by an appellate court of the State of South Carolina.

Note: I, the Applicant, am innocent of the charges herein. Also, the Appendix referenced in this amendment relates to the Applicant's first PCR action, Case No.: 97-CP-08-458.

CONCLUSION

The Applicant has shown that the officials associated with this case acted in a reckless manner with a total disregard for the truth. They tampered with evidence, withheld evidence, there's a missing link in the chain of custody and they committed perjury. The attorneys involved in this matter appeared to be accomplices because they never produced the documents attached to this amendment to show that the fingers and palms prints evidence were tainted because they were tampered with and should not have been admitted at trial. Nor did the attorneys file a notice of appeal on behalf of the Applicant to give the higher Courts of this State an opportunity to review this matter.

For all of the foregoing reasons, which has shown that the officials involved here played fast and footloose with the evidence and the truth, the Applicant believes that he is entitled to an evidentiary hearing and a belated direct appeal as so this State's higher Courts can review the conduct complained of here.

This 22nd day of August, 2014

Respectfully submitted,

Johnny Lee Lucas #235656
Johnny Lee Lucas #235656
MCCI F-4 286-A
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Johnny Lee Lucas, #235656,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

Case No.: 2012-CP-08-1216

CERTIFICATE OF SERVICE

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 AUG 26 AM 10:51

FILED

MD

The Applicant certify that on this day he served a copy of the attached amendment on the Respondent by delivering a copy of same to the McCormick Correctional Institution mail room, with sufficient postage prepaid and addressed as follows:

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

This 22 day of August, 2014

SWORN to and subscribed before me this

22 day of August, 2014

JC Franklin
Notary Public of South Carolina

My Commission Expires 12-16-2019

Johnny Lee Lucas 235656
Johnny Lee Lucas #235656
McCI F-4 286-A
386 Redemption Way
McCormick, SC 29899
Applicant



OFFICE OF THE SHERIFF
Dorchester County • South Carolina

212 Deming Way, Summerville, SC 29483 • 100 Sears St., St. George, SC 29477

Summerville
Phone 832-0300
FAX 832-0308

St. George
Phone 563-0259
FAX 563-0263

JOHN G. SOUTHERLAND
Sheriff

April 22, 1996

Monday April 22, 1996 Johnny Lee Lucas was released from the hospital to the custody of Dorchester County Sheriff's Office. When Mr. Lucas arrived at the office in Summerville, I rolled inked impression of his fingers and palms. Capt. C. W. Henerey gave me photograph of the photograph that S.L.E.D. had taken from evidence in the Cooper Homicide in Berkely. The print was labled S.L.E.D. 3.2. A positive match was made with the left palm of the inked impression of Johnny Lee Lucas. I contacted S/A Kelvin Krimminger, the case agent that processed the crime scene in Berkeley County. I went over my findings with S/A Krimminger and told him that Capt. Henerey was on his way to S.L.E.D. with the finger and palm print cards bearing the name Johnny Lee Lucas for him to compare with the original photograph of the evidence. *

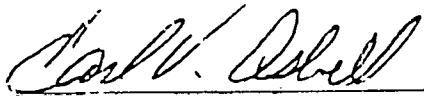

Earl V. Asbell, Sgt.

Exhibit-A

Exhibit - C

On 3/6/96 Capt. Henerey, Det. Lewis, Ollic, Smalls, Boyer, Kokinda and this agent returned to the crime scene and began to examine the victim's truck in the daylight. Upon examination, a piece of black rubber substance was found on the bumper and photographed and collected by Det. Kokinda. Also on the passenger side front corner of the bumper there was white paint which was photographed. Det. Lewis and this agent measured the tire impressions left in the backyard of the residence. (See attachment #11) Also found in the backyard of the victim's residence was some glass, a watch band, sunglasses stem and money. (See attachment #12)

This agent contacted Agent Crimminger and learned that the only prints not identified as belonging to family members was a partial palm off the crumpled check from the bedroom, a partial palm and fingerprint from the check book cover.

During the next five weeks, Det. Lewis and Ollic, and this agent talked to and/or eliminated 85 people either by their palm prints, which were taken by consent or by checking out their whereabouts on the day of the homicide. (See attachments #13 & #14)

On 4/15/96, the Berkeley County Sheriff's Office received a phone call from the Dorchester County Sheriff's Office in reference to a burglary and shooting which had occurred at 234 Myers Mayo Road in Dorchester County. Capt. Henerey, Det. Lewis and Ollic responded to the scene of Dorchester County's burglary because it was very similar to the homicide burglary we were working.

96-03-05891

NO

- ORIGINAL REPORT
- MODIFIED ORIGINAL

- SUPPLEMENTAL REPORT
- CASE STATUS CHANGE

- ADDITIONAL VICTIMS
- ADDITIONAL OFFENDERS

- ADDITIONAL STOLEN PROPERTY
- ADDITIONAL RECOVERED PROPERTY

PAGE 4 of 8

REFERENCE: HOMICIDE

LOCATION: 1483 CHERRY HILL ROAD, MONCK'S CORNER, S.C.

DATE: MARCH 05, 1996

This was photographed by Det. Kokinda and collected as evidence. Further the vehicle belonging to the victim was measured and documented. This concluded and reflected the information and other evidence located at the victim's residence on this day March 6, 1996.

Between March 6, 1996 and April 15, 1996, approximately 65 possible suspects were interviewed by this agency and major case prints were obtained by consent and some were obtained by arrest of these persons on unrelated charges. A list is provided of all the persons that this agency interviewed regarding this Homicide of Clarence Cooper. Investigation continues.

Information was provided to this agency from the State Law Enforcement Division that they had obtained a print believed to be of the palm of a crumbled up check belonging to the victim's wife Pearlina Cooper. This check was taken as evidence the night of the Homicide.

On April 15, 1996, this officer Det. Lewis and Captain Henerey responded to 254 Myers Mayo Road, Ridgeville in Dorchester County. We responded as a result of an incident being investigated by Dorchester County officials regarding a Burglary and death of one of the suspects at this location. Because Dorchester County officials were aware of our on-going investigation of the Homicide of Clarence Cooper of 1483 Cherry Hill Road, Moncks Corner, they notified this agency because of similarities in the

Exhibit-D

Rule 5

NARRATIVE

ADMINISTRATIVE

<input checked="" type="checkbox"/> SUBJECT IDENTIFIED YES <input type="checkbox"/> NO		<input checked="" type="checkbox"/> SUBJECT LOCATED YES <input type="checkbox"/> NO		<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED		<input checked="" type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION				3. <input type="checkbox"/> EXTRADITION DENIED		4. <input type="checkbox"/> VICTIM DECLINES COOPERATION		5. <input type="checkbox"/> JUVENILE - NO CUSTODY	
REPORTING OFFICER(S) <i>L.L. E.D. Det</i>		DATE 06/01/96		UNIT NUMBER 219		APPROVING OFFICER <i>[Signature]</i>		DATE 6/1/96	

Johnny Lee Lucas #235656
MCCI F-2167-A
386 Redemption Way
McCormick, SC 29899

LEGAL MAIL

The Honorable Daniel E. Shearouse,
Clerk, South Carolina Supreme Court,
Post Office Box 11330
Columbia, South Carolina 29211

JUL 29 2015

THE DEPARTMENT OF CORRECTIONS
INSPECTOR GENERAL
FOR ITS CONTROL
S.C. DEPARTMENT OF CORRECTIONS

RECEIVED
MCCI
MAIL ROOM
JUL 24 2015

JOHNNY LEE LUCAS #235656

McCI F-4 167-A
386 REDEMPTION WAY
McCORMICK, SOUTH CAROLINA 29899

RECEIVED

JULY 22, 2015

JUL 29 2015

THE HONORABLE DANIEL E. SHEAROUSE
CLERK, SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
COLUMBIA, SC 29211

S.C. SUPREME COURT

RE: JOHNNY LEE LUCAS V. STATE OF SOUTH CAROLINA
APPELLATE CASE No.: 2015-001321

DEAR MR. SHEAROUSE:

I HAVE SUBMITTED THE ENCLOSED DOCUMENTS TO BE REVIEWED IN CONJUNCTION WITH THE LETTER YOU RECEIVED FROM MY PCR ATTORNEY, MR. RODNEY D. DAVIS, ESQUIRE, DATED JULY 17, 2015, IN REFERENCE TO THE ABOVE ENTITLED MATTER.

THE ENCLOSED "EXPLANATION" WAS SUBMITTED DURING MY PCR PROCEEDINGS, MY PCR ATTORNEY HAS A COPY AND SO DOES THE ATTORNEY GENERAL'S OFFICE, THE "ORIGINAL" IS FILED WITH THE BERKELEY COUNTY CLERK OF COURT, BUT NO ONE HAS EVER PRESENTED OR ARGUED THE ISSUES RAISED IN THIS DOCUMENT DURING THE HEARING, IN FACT, IT HAS NEVER BEEN DISCUSSED.

I AM ASKING YOU TO REVIEW THESE DOCUMENTS WHEN CONSIDERING WHETHER TO ALLOW MY APPEAL TO CONTINUE, ITS BEEN ALMOST TWENTY (20) YEARS AND I'VE NEVER HAD A DIRECT APPEAL OF MY CASE ALL BECAUSE OF THE LIES MY TRIAL ATTORNEYS TOLD AT MY FIRST PCR HEARING, THEY LIED AND SAID THAT I TOLD THEM I DIDN'T WANT AN APPEAL. THEY ALSO LIED WHEN THEY SAID THEY DID NOT RECEIVE MY LETTER ASKING THEM TO FILE A NOTICE OF APPEAL ON MY BEHALF.

PLEASE DON'T JUST CONSIDER THE ORDER OF DISMISSAL PREPARED BY THE ATTORNEY GENERAL'S OFFICE, ITS MORE TO THIS SITUATION THAN A SUCCESSIVE OR UNTIMELY PCR APPLICATION.

THANK YOU FOR ALL THE ATTENTION AND ASSISTANCE YOU GIVE THIS VERY IMPORTANT MATTER.

ENCLOSURE(S)

CC: PERSONAL FILE

SINCERELY,

Johnny Lee Lucas