

April 14, 2017

RECEIVED
APR 18 2017
S.C. SUPREME COURT

Re: Anthony Wilder v. State
Appellate Case No. 2016-001697

Dear Clerk of Court:

Enclosed is a prose response for a Petition for writ of certiorari, in response to a Johnson Petition for writ of certiorari filed by John H. Strom, Appellate Defender.

Additionally, I ask the court can I be provided with copies from the court of the Petition for writ of certiorari brief that is enclosed.

Respectfully Submitted,

Anthony Wilder
Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 18 2017

S.C. SUPREME COURT

Certiorari to Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

Anthony D. Wilder,

Petitioner

v.

STATE OF SOUTH CAROLINA,

Respondent

APPELLATE CASE NO 2016-001697

Pro Se Response Petition FOR WRIT OF CERTIORARI

Anthony D. Wilder

McCI.

386 Redemption Way

McCormick, SC 29899

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Questions Presented

1. Did the PCR court error in not ruling on whether Appellate Counsel was ineffective assistance of counsel for not raising issue properly preserve for appeal where trial counsel made an objection to the admittance of mask marked state's Exhibit No. 104; pair of gloves marked state's Exhibit No. 105; and a pair of gloves marked state's Exhibit No. 106 when the collection officers did not identify this evidence and trial judge overruled the objection?
2. Did the PCR court error in ruling that had Petitioner had a Biggers hearing Petitioner would not had prevail, where trial counsel was ineffective assistance of counsel for failing to timely object to unreliable in court identification?
3. Did the PCR court error in not ruling on whether trial counsel was ineffective assistance of counsel in failing to object to the admittance of state's evidence, a mask marked state's Exhibit No. 113, and a glove marked state's Exhibit No. 114, when there was a missing link in the chain of custody?
4. Did the PCR court error in not ruling on whether trial counsel was ineffective assistance of counsel for not objecting to the admittance of state's evidence when the chain of custody was not establish, where the custodian of property and evidence was not identify at the evidence compound?

5. Did the PCR court error in ruling SCRE Rule 702 does deal with the reliability of evidence?

Statement Of The Case

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the March 2008 term of the Charleston County Grand Jury for Murder (2008-GS-10-2383), Burglary first degree (2008-GS-10-2385), Assault and Battery with Intent to Kill (2008-GS-10-2386), and two counts of Kidnapping (2008-GS-10-2384, and 2390). App. 1103-1112. Petitioner was represented by Lionel S. Lofton, Esquire, and V. Lynn Lofton, Esquire. App. 1.

On May 5-9, 2008, the Petitioner proceeded to trial and was found guilty as indicted. App. 19, LW1; App. 967, LW3-976, LW14. The Petitioner and each co-defendant was sentenced by the Honorable J. Derham Cole to confinement for a period of Life for Murder and Burglary, twenty years for ABWIK, and thirty years for Kidnapping. The sentence for Kidnapping indictment 2008-GS-10-2390 was suspended because Petitioner was also convicted of Murder for the same victim. App. 988-991, LW22.

The Petitioner filed a timely Notice of Appeal. Appeal was done by Robert M. Dudek, Esquire, of the South Carolina Office of Appellate Defense. App. 994-1009. The Petitioner's convictions and sentences were affirmed by the Court of Appeals. State v. Wilder, No. 2011-UP-385 (S.C. Ct. App. August 9, 2011). App. 1010. Petitioner filed for Rehearing, which was denied on November 17, 2011. The Petitioner petitioned for writ of certiorari to the South

Carolina Supreme Court. The South Carolina Supreme Court denied the petition on March 20, 2013. The Remittitur was issued April 9, 2013. App. 1031, LN 25-1032, LN 3.

Petitioner went before the Ninth Judicial Circuit Court by way of an Application for Post-Conviction Relief filed September 25, 2013. App. 1011-1022. A notice of ~~Amendment~~ Amendment to the Petitioner's PCR Application was filed on April 24, 2014. App. 1043, LN 8-20. An evidentiary hearing into the matter was convened on December 15, 2015 at the Charleston County Courthouse. The Petitioner was present at the hearing and represented by Sharnaisha Naki Richardson-Bax, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent. App. 1029-1081. On May 5, 2016 the PCR court denied Petitioner's application by a written order of dismissal filed May 6, 2016 and served May 12, 2016. App. 1083-1092. There was an amended order of dismissal filed July 26, 2016. Pursuant to the Petitioner's Motion to Alter/Amend Judgment filed on May 26, 2016 and received on June 10, 2016 this order is amended to reflect the Applicant's allegations made in his Notice of Amendment to his Post-Conviction Relief Application. Counsel submitted copies of letters to the court dated January 6, 2016 (Exhibit #1) and January 14, 2016 (Exhibit #2) that were sent to the state which addressed the issues raised by her client after the hearing. This motion was disposed of without the necessity of a hearing and decided on the record and written motion. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536. (Ct. App. 1994). The state was given the opportunity to respond to the motion and declined. This court found that all issues that were raised during hearing have now been addressed and those raised afterwards are waived as untimely. App. 1093-1102.

ARGUMENT

1. The PCR court error in not ruling on whether Appellate Counsel was ineffective assistance of counsel for not raising issue properly preserve for appeal where trial counsel made an objection to the admission of mask marked state's Exhibit No. 104, pair of gloves marked state's Exhibit No. 105, and a pair of gloves marked state's Exhibit No. 106 when the collection officers did not identify this evidence and trial judge overruled the objection. App. 1043, LN 16-19, App. 1047, LN 13-1048, LN 17.

Investigator Kjellman, a state witness testified on direct examination to items of evidence found on the road given to her from Detective Krause, which was state's proposed 106 pair of gloves, 105 pair of gloves, and 104 a mask. App. 528, LN 24-529, LN 16. When the state moved to admit State's Proposed 104, 107, 106, and 105 co-counsel made an objection in regards to 104, 105, and 106 where the collection officer had not identify them. Objecting to the chain. Trial counsel joined in and also stated he has the same objection and that the collection officer had not identify those specific items that he turned over. Trial judge overruled the objection stating this officer, Kjellman, has identify. App. 531, LN 15-532, LN 17. Trial counsel also renewed his objection at the end of trial. App. 834, LN 5-9. Additionally, Detective Krause, on direct examination, testify to receiving gloves and mask that was said to been thrown out jeep, from North Charleston Technical Services Officer. App. 396, LN 7-397, LN 6.

However, Deputy Krause never identified the gloves nor mask he received and turned over. Furthermore, Investigator Kjellman did not

Know specifically if gloves and mask were in either paper bags or plastic bags. And whichever of the two, gloves or mask was in the paper bags, was not sealed. App. 545, LN 25-547, LN 20.

The admittance of this evidence was prejudicial and error when collection or founding officers did not identify these items of evidence. Appellate Counsel's failure to raise issue on Appeal was prejudicial and harmful to petitioner because of the evidence incriminating nature. App. 1079, LN 9-16. His failure to raise this issue denied petitioner the fourteenth Amendment of the United States Constitution Article I, § 3 of the South Carolina Constitution and Sixth Amendment of the United States Constitution Article I, § 14 of the South Carolina Constitution.

Appellate Counsel representation fell below the standards of reasonableness when he fail to raise this issue pertaining to gloves and mask to see whether trial judge abused his discretion in admitting these items of evidence due to the collection or founding officers failure to identify. Had Appellate Counsel raised issue it would have shown a cumulative effect towards the bias in the chain of custody issues.

Trial judge admitted into evidence gloves and mask who founding officer never identified. The authenticity of a particular piece of evidence must be proved before it is admissible. Investigator Kjellman testified to receiving gloves and mask from Detective Krause who did not identify gloves or mask, stating those are in fact the items of evidence turned over. And that Detective Krause also was not the actual founding officer, where he testified receiving gloves and mask from North Charleston Technical Service Officer, who did not neither identify gloves and mask for authentication and identification. The requirement of authentic-

ation or identification as condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what it proponent claims. SCRE Rule 901(a).

For Appellate Counsel's failure to raise issue preserve for Appeal, Petitioner was denied the Sixth Amendment of the United States Constitution Article I, §14 of the South Carolina Constitution and the fourteenth Amendment of the United States Constitution Article I, §3 of the South Carolina Constitution. The admittance of this evidence was prejudicial to Petitioner. Had not evidence been admitted it would have taken away from the weight of the evidence and possible considerations for a not guilty verdict. Appellate Counsel failure to raise issue properly preserve was error and highly prejudicial to Petitioner.

2. The PCR court error in ruling that had Petitioner had a Biggers hearing, Petitioner would not had prevail, where trial counsel was ineffective assistance of counsel for failing to timely object to unreliable in court identification.

Petitioner stated there was a in court identification that trial counsel notified Petitioner of a few weeks before trial, that was not inside the motion of discovery. App. 1036, LN15-1037, LN17. Trial counsel testified he pursued the in court identification based on photographs taken by the State. PCR counsel asked trial counsel did he object to this in court identification; the state objected to the question. Trial counsel went on to answer that he do not know. App. 1060, LN7-1061, LN18; App. 1062, LN12-24.

Patricia Green, a victim in the case, testified to on direct examination that at back on August the 31st of 2006, it was the afternoon the storm was supposed to come and she had just gotten off from work. And that she layed down to take a nap, after speaking with her sons. So Green heard the dogs barking in the yard so she got up and looked out the window. Where she saw a young man standing across the street in front of Ms Daniels' house with hands behind his back, pacing back and forth with a black hat on, and black looked like, sweat shirt and dark blue jeans and some black shoes. So Green figured that was Ms Daniels grandson or one of her relatives coming to stay with them for the storm. So Green laid back down. So the dogs started barking again, but she notice a difference in the bark. So Green said someone must be in the yard or someone's around the house, and by time Green was coming down the steps

and got to the third step, in order to get to the second step, that's when he kicked the door in. App. 118, LN-119. Green testified the front window that she looked out of, is up on the second floor, and the person she saw was brown skinned and chunky looking, stocky, you know big. When Green was further questioned, if she saw him again would she recognize him, and did she see him in court? She answered, "Yes." She was then ask to point to him and describe what he was wearing. Green identified Petitioner. Trial counsel made no objection. App. 121, LN 16-18; App. 122, LN 15-123, LN 17.

Here trial counsel was in error for failing to make a timely objection to this unreliable in court identification of Petitioner. Which was a violation of my Sixth Amendment of the United States Constitution Article I, § 14 of the South Carolina Constitution and fourteenth Amendment of the United States Constitution Article I, § 3 of the South Carolina Constitution.

Green further testified, on direct examination, as she was coming downstairs, and about to hit the second step, that's when he kicked the door in. And the door kicked her and threw her backwards on the step. And that's when he grabbed her by her shirt collar, and just started commencing beating her in the head with the gun butt and blood was just pouring down her face into her eyes. And he kept asking where everything is, and she was trying to wipe the blood out of her eyes so she could see. That's when he made the statement come on in and that's when she seen the rest of them coming threw the door. Green testified the person hitting her with the gun had a mask on and had on blue surgical gloves, and the gun she was getting hit with was 9mm. App. 124, LN 7-24; App. 127-129, LN 15. Green was then asked as follows:

Q. When you say the rest of them, how many more do you remember seeing coming in? A. I could have sworn I seen five, but it's only three. Q. And 'why' do you say it was only three? A. Because that's all they caught, was three. App. 129, LN 16-20. And when Green was asked about the blood in her eyes, and were she able to see clearly. Green stated that's what she was trying to figure out. She probably. App. 129, LN 24-130, LN 4.

Green continued on direct examination, that while she was getting beat with gun, she saw people come in. Green was asked about the one still hitting her with the gun, what was his build or what was his size? She told the Court he was the brown skinned one, because she could tell by the holes in the mask he had on. You could see the brown of his eyes and around the the mouth. And he had the same clothes that he had on when he was across the street. Green was then asked, "So the clothing that was worn by the person across the street was the same one that kicked in the door, you've identified as defendant Wilder?" Green answered, "Yes, Right." App. 130, LN 7-131, LN 10. With no objection made from trial counsel.

Green then testified he told the dark skin one with the dreads to go get the tape, and that's when he had the gun down her mouth. To where he started execution, taping, duct taping her up. The solicitor then asked, "who-he-is?" Green testified the first one that came threw, the one that kicked the door in and hit her with the gun who she identified as Wilder. App. 132, LN 10-22; App. 134, LN 11-25; App. 136, LN 10-14.

For trial counsel failure again to timely object to this unreliable in court identification was very prejudicial to Petitioner.

P. Green, on cross examination, ~~by counsel~~ asked about the statement she gave to the police in the hospital after this incident

happened, and did she understand that it was important that she focus on and give the most truthful answer she could. Which Green can confirm she did to the best of her knowledge. Co-counsel continued that in the statement she described the first guy as being 5'6", 200 pounds. Which Green denied in her trial testimony to giving a height in her statement. Co-counsel then marked for identification Green's statement and asked Green did she recognize those four pages as her statement with her signature on the bottom of each four pages. Green answered, "Yes." Then co-counsel went on to inquire about the statement where Green stated, "first guy was 5'6", 200 pounds, second person 6'4", then first guy yelled come on, where four others entered, which three of the four went upstairs, and tall thin one 6'4" stayed downstairs". Green answered, "She guess at that time." Co-counsel then asked Green about the other four guys she described in her statement. Green began to dispute her claim of the other four guys from her statement on cross-examination by stating, she did not see them, by the time he came in the door, when he kicked the door in, and started hitting her, the blood was pouring all over her face. Green stated she could have made a mistake, she thought she saw four people, that why she kept trying to wipe the blood out her eyes. App. 151, LN 23-155, LN 14; App. 161, LN 25-167, LN 1.

Co-counsels and trial counsel, on cross-examination, ask Green the same line of questioning about her earlier testimony. Where she told the jury that the individual she saw across the street, and the individual she said was the first one that came and kick in her door, was also the individual that taped her up. Green answered, "Yes." Trial counsel then asked, "However, when you gave the statement to the police on

August 31st, a copy of what you have in front of you, that's not what you told police, was it?" Trial counsel continued, "right after the incident occurred you told the police the one who was 6'4" was the one that taped you up, didn't you?" Green answered, "I'm not sure." "That not what happened though." When co counsel asked, "So your statement was incorrect, is that right?" She answered, "Yeah, right." App 155, LN 15-25; App 174, LN 9-175.

Patricia Green, on cross-examination by Mr. Lofton, was further questioned about tree limbs that was shown to be in front of her window from pictures taken from outside her house. And how was it possible for her to see someone standing across the street with tree branches obstructing her view. Green claim from the pictures that is how it looks, however, that is not how it actually is to where it would obstruct her view. Trial counsel continued on cross examination, that she told the jury she saw this individual standing across the street and asked Green, "Now how far from your window is it to where you supposedly saw this individual standing across the street?" She answered, "from here to the back of the room." And when she looked out her window, he didn't have the mask on, and that she could not see the hair because of the hat rolled up like a Marvin Gay, standing across the street pacing back and forth with hands behind back. And that she just laid back down because she thought it was Mr. Daniel's grandson or some of his relatives came to stay with them. Trial counsel then asked Green, "how long did you observe this individual?" She answered, "when she heard her dogs she got up and looked out the window, saw him standing ~~across~~ the street without the mask down on his face, and from the distance he looked short and stocky

because she was upstairs. Trial counsel then asked Green did she see Petitioner on the news or T.V. that night, and how many times did she see Petitioner on the news and in the newspapers? She answered, "She did not see him on T.V. that night. It was broadcasting that whole week, in the papers and all over the news. And during that week she saw him once on T.V. and once in the newspapers. Where trial counsel further questioned Green, that after she saw Petitioner on the news and in the newspapers, she did not call the police and tell them, "I saw the guy that was standing across the street, did you?" Green answered, "No." And that the police never showed Green any photographs. App. 168, LN 4-176, LN 2.

On redirect examination, Patricia Green was asked from her statement of those three and a half pages, the part about who taped her up was confusing, and inaccurately stated, and the question where she said there were five people was inaccurately as well. Green answered, "Yeah." Then when she was asked were those the only two things she were aware of that were inaccurate that she was asked about. Green answered, "And as far as the height. I mean, probably. I can't judge a person by looking and telling how high, how tall. I can't even tell you how tall you are." App. 181, LN 19-182,

LN 7.

For trial counsel failure to timely object to the unreliable in court identification of Petitioner was very prejudicial. For trial counsel's failure to make any objection, made his performance below the objective standard of reasonableness. Green limited opportunity to view her attacker, when her attention was taken when her door was kicked in and the door threw her backwards onto the steps, Her attention was impede

when grabbed and allegedly beat with pistol immediately with repeated blows throughout entire incident. Her vision was impaired, when blood poured down her face into eyes, when grabbed and allegedly beat with pistol on steps. Green claims a gun was shoved down her mouth until she gagged, where there is no evidence to corroborate. After all firearms were swabbed for DNA and skin cells to be sent to S.L.E.D., no DNA was found on any firearms. Green in court identification became more unreliable when she denied her written statement, written immediately after incident, stating statements were incorrect, and changing trial testimony from statements. Green testified she changed it from five suspects to three suspects because that is all the police caught. Which was suggestive and showed in court identification was not of independent source, and a highly likelihood of irreparable identification. In court identification was unreliable for due process purposes when there was no evidence of out of court identification and Green was allowed to see Petitioner in court room at defense table through opening statements, and a witness testimony before giving in court identification testimony. App. 75, LN19-76 LN1. There was a twenty month time span between incident and in court identification. Green claimed she seen individual across the street face clear, to say it was Petitioner. However, for trial counsel deficient performance in failing to investigate, trial counsel could have presented evidence that Petitioner had a beard (exhibit #3) at time of arrest, which Green did not identify. Trial counsel also failed to investigate the distance from where Green allegedly saw Petitioner. There was no evidence introduced of Petitioner height, weight, or facial features.

PCR court erroneously claim had trial counsel had a Biggers hearing Petitioner would not have prevailed on it. And If it was error for trial counsel to not request for one, it would have been harmless error. App. 1076, LN 23-1077, LN 12.

Trial counsel performance was below the objective standard of reasonableness when he failed to object. From these multiple errors and inconsistencies through Green trial testimony render in court identification unreliable, and not curable threw mere cross examination when Green in court identification testimony of Petitioner was an element to place Petitioner at the scene of the crime. Additionally, it was also an element for the state to charge the 'hands of one hands of all', and accomplice liability. At the outset the solicitor in opening statements argued to the jury there's a principle in the law called the hands of one is the hands of all, and reiterated it again in closing arguments. App. 101, LN 5-103, LN 4; App. 866, LN 22-867, LN 23; App. 881, LN 25-882, LN 10. The only way the hands of ~~one~~ hands of all can be charge to the jury, is when evidence is admitted showing the existence of the common design and the participation of the accused against whom the evidence is offered is shown. Which this in court identification was the primary evidence to establish the evidence of this charge.

This made trial counsel extremely ineffective because of his failure to object to this in court identification was very damaging to my defense. Had trial counsel made timely objection, with proper argument, result of trial would have been different. The PCR court error in finding trial counsel's testimony very credible. App. 1088. Petitioner was denied the Sixth Amendment of the United State Constitution Article I, §14 of the South Carolina Constitution and Fourteenth Amendment of the United States Constitution Article I, §3 of the South Carolina Constitution. Trial counsel failure to object, to un-

reliable in court identification was unreasonable and extremely prejudicial to Petitioner.

3. The PCR court error in not ruling on whether Trial counsel was ineffective assistance of counsel in failing to object to the admittance of states evidence, a mask marked state's Exhibit No. 113, and a glove marked states Exhibit No. 114 when there was a missing link in the chain of custody.

Trial counsel was ineffective for not objecting to the chain and admittance of state's evidence No. 113 and No. 114 which was highly prejudicial to Petitioner.

Investigator Roy, on direct examination, testified to receiving a glove and mask from Detective Stanley in the following testimony:

A... And I also collected some items from Detective Stanley's vehicle.

Q. That was -- what items did Detective Stanley give to you?

A. A glove and a mask that he stated he picked up on Interstate 26.

Q. So Detective Stanley gave you a glove and a mask?

A. They were in the trunk of his vehicle. He just opened the trunk and I got them from him.

Q. What would you have done with the glove and the mask?

A. They were bagged immediately. I wore gloves to do this. Bagged and then secured in my vehicle and eventually transported to the evidence compound.

Q. So they would have went from Detective Stanley to you, to the evidence compound.

A. Yes, Sir. App. 421, LN 16-422, LN 6.

However, when Detective Stanley testimony is looked upon, whom

Investigator Ray testify to receiving a glove and mask from, Detective Stanley testified to on direct examination as follows:

Q. And this actually has says mask collected by Detective Stanley, I-26 past Highway 78. That's 113. And the other says I-26 east before Highway 78, lane two, glove collected by Detective Stanley?

A. Yes, Sir.

Q. Did you write that on there?

A. Actually 'Deputy Ward' wrote that on there when I turned the items over to him.

Q. So you had them. You had them, gave them to him, and you saw him write that on the bag.

A. Yes, Sir. App. 604, LN 2-12.

Here, trial counsel failed to make timely objection to this missing link, when Detective Stanley does not link himself to Investigator Ray, but to a Deputy Ward, was extremely prejudicial to Petitioner. When the state moved to introduce evidence No. 113 for a mask and No. 114 for a glove S.L.E.D. No. 15, trial counsel failed to make any objection in regards to this missing link. App. 698, LN 2-20.

After the jury retired to deliberate, the jury returned to the courtroom to rehear the testimony of state's witness Lilly Gallman, a forensic D.N.A. analyst from S.L.E.D. The court replayed Lilly Gallman testimony from the beginning and stopped it at this last question and answer as follows: Q. So although we don't know who that person is, we do know other places their blood was at? A. That's correct. App. 964, LN 19-965. The portion of testimony replayed for the jury was App. 700, LN 8-716, LN 2. And within that portion of the testimony heard by the jury

is referring to item 15.4, a cutting from a glove, which obtained D.N.A. that matches S.L.E.D. Item No.3 swab from a stair post, and S.L.E.D. Item No.5 a swab from the living room floor of Patricia Green residents. Which 15.4 a cutting from glove is marked state's No.114, that is actually Item 15.0. App. 714, LN32-716, LN2-App. 692, LN24-693, LN10.

Trial counsel performance fell below a objective standard of reasonableness when he did not make any objection to the missing link of State's Exhibit No.113 and No.114 which was the direct result of Petitioner's conviction. Petitioner contends that counsel failure to object to this incomplete chain rendered his performance deficient and extremely prejudicial to the defense. Detective Stanley, the collection officer, testified to turning glove and mask over to a 'Deputy Ward', whom there is no documentary evidence, reports, sworn statements, signatures, or testimony from under oath. However, we have Investigator Ray claiming he received those same glove and mask from Detective Stanley, whom does not link himself to Investigator Ray.

The admittance of this admittance was highly prejudicial to Petitioner, that this evidence is what the jury deemed their guilty verdict upon. Which takes away trial counsel's credibility. App. 1088. Investigator Ray had an ill motive when he falsely claimed receiving glove and mask from Detective Stanley, when Detective Stanley testified giving evidence to a unknown 'Deputy Ward'. In counsel falling short of objecting to this missing link violated Petitioner's Sixth Amendment of the United States Constitution Article I, §14 of the South Carolina Constitution and fourteenth Amendment of the United States Constitution Article I, §3 of the South Carolina Constitution. Had trial counsel objected to the chain of this evidence it is not

likely the jury would have return a verdict of guilty.

Trial counsel failure to object to insufficient chain where there was a missing link constituted prejudicial error and was very harmful to Petitioner.

4. The PCR court error in not ruling on whether trial counsel was ineffective assistance of counsel for not objecting to the admittance of state's evidence when the chain of custody was not establish, where the custodian of property and evidence was not identify at the evidence compound.

Trial counsel was ineffective for not objecting to the state's failure to establish a complete chain when the custodian of property and evidence was not identified.

From the circumstances of this case, the chain of custody and handling of the evidence was an important issue due to D.N.A. being on evidence and evidence being wet because of this incident occurring during a tropical storm with heavy rain. And the fact that evidence was sent to S.L.E.D. for D.N.A. analysis and comparisons to see whether or not any D.N.A. from victims was on Petitioner or Petitioners D.N.A. was anywhere was crucial to the state's case. App. 343, LN 4-5; App. 656-667; App. 681, LN 17-18; App. 923, LN 6-10.

This evidence was multiple gloves and masks recovered from off the road that were incriminating when returned from S.L.E.D. because of D.N.A., gunshot residue, and round lead particles were found on them. Also Petitioner, co-defendants, and victims clothing were collected from various hospitals that were sent to S.L.E.D. and returned with D.N.A. matches used to connect Petitioner to the crime. App. 471, LN 12-473, LN 12; App. 503, LN 13-504, LN 17; App. 509-511, LN 19; App. 516-521, LN 7;

App. 714, LN 22-724; App. 768, LN 12-769, LN 4.

Additionally with testimonies given at trial about the collection of these evidence by collection officers. Whom testified that evidence was not properly sealed nor bagged by them following protocol, to prevent any cross contamination, intermingling, or biological hazard. App. 545, LN 23-547, LN 20.

When Investigator Ray, on direct examination by Mr. Williams, gave testimony to the evidence at the evidence compound as follows:

Q. I want to ask you quickly about the accounting of evidence when evidence such as Mr. Wilder's clothes are taken to y'all's crime scene office or compound, is it logged in?

A. It is. It comes in. In this case there's a large ~~amount~~, large volume of items. They're taken separately, opened, checked to see if the items need to be dried primarily or other processes. These are all done individually, and then they're put back in the bags and put into storage.

Q. And the particular items that you listed out on the computer so you know it's there right? A. Exactly.

Q. So you can account for where the items go and what's available.

A. We can.

Q. And that's done by crime scene officers. A. It is.

Q. And it's done by those -- the standard protocol is done inside your compound by whoever is working the case. A. It is.

Q. Although you don't know who did it in this case, it would have been one of the crime scene officers involved. A. It would have. App. 445, LN 23-446, LN 20.

Here, trial counsel failed to make a timely objection to this missing

link in the chain of custody of the evidence custodian who handled evidence at the evidence compound. For trial counsel failure to object to this missing link made the admittance of the evidence very harmful and highly prejudicial to Petitioner. There was numerous items of evidence used to place Petitioner at the scene of the crime. App. 1079, 109-16. Also, there was a unidentified evidence custodian at the evidence compound who opened, handled, and moved evidence from these evidence bags. However, there is no evidence of whom this evidence custodian is or how did he or she handle this evidence once inside their evidence compound.

Eventhough Investigator Ray gave testimony to what is done with the evidence once transported to the evidence compound, he was not that evidence custodian, nor did he know who that evidence custodian was. So it was only speculated of what this evidence custodian did in handling the evidence or would have done in handling evidence at the evidence compound. The evidence at the evidence compound was susceptible to alteration by tampering and contamination. The admittance of this evidence was in bad faith, with proof of tampering and highly prejudicial to Petitioner. Trial counsel failed to object or interject questioning in regards to the missing link at the evidence compound. By trial counsel not objecting to the incomplete chain denied Petitioner the fundamental right to a fair trial, effective assistance of counsel, and due process of law under the Sixth Amendment of the United States Constitution Article I, § 14 of the South Carolina Constitution and the fourteenth Amendment of the United States Constitution Article I, § 3 of the South Carolina Constitution. Had trial counsel objected to this missing link it would have raised the possibilities for a not guilty verdict.

From trial counsel failure to object to this incomplete chain constituted prejudicial error and was very harmful to Petitioner.

5. The PCR court error in ruling, SCRE Rule 702 does deal with reliability of evidence.

At the PCR hearing, PCR counsel questioned Petitioner as follows:

Q. And how further was appellate counsel deficient?

A. The argument that he raised, that was the point, because he was arguing the same thing the trial counsel argued. He argued that -- the inference was reliability under Rule 702, and Rule 702 does not deal with reliability. It deals with the testimony of expert. App. 1048, LN 7-14.

The PCR court ruled it does deal with reliability and it is applicable. App. 1049, LN 8-19.

Petitioner argues that Appellate counsel raised this argument before the court of Appeals under Rule 702, like trial counsel during trial. App. 678-680, LN 3; App. 999; App. 1005-1006. The basis of their argument relies on Rule 702, on reliability of evidence.

However, in South Carolina Rules of Evidence, Rule 702 is Testimony by Experts. Dealing with the qualification of the expert, the person itself. Not the reliability of evidence. In Respondents Brief page (16) sixteen, on Direct Appeal, the state rebut this rule was misplaced. The Respondents Brief is not in Appendix for Petitioner to give a reference page. Petitioner argues that PCR court error in ruling, Rule 702 deals with reliability of evidence, and Appellate counsel an trial counsel performance inadequate. The arguments made under SCRE Rule 702 was error and very prejudicial to Petitioner. Petitioner was denied the Sixth Amendment of the United States Constitution Article I, § 14 of the South Carolina Constitution and the fourteenth Amendment of the

United States Constitution Article I, § 3 of the South Carolina Constitution.

The PCR Court was in error in ruling and very prejudicial to Petitioner.



CORRESPONDENCE

January 6, 2015

Rutledge Johnson, Jr. Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Re: Anthony Wilder v. State of South Carolina
2013-CP-10-5655

Mr. Johnson:

I am in receipt of the proposed order for the above-titled hearing. As you are aware, during the hearing I asked Judge Jefferson if I could have the opportunity to supplement the record due to the issues regarding the supplemental PCR applications without your objection. Judge Jefferson had agreed with the stipulation that I vet all information from my client to determine if there were any meritorious issues that needed to be addressed before any submission to the court or to yourself. I have received correspondence from my client asking that a number of issues be addressed. They are the following:

1. Trial counsel was deficient in failing to timely object to unreliable in-court identification. Specifically, Mr. Wilder believes that trial counsel did not do a sufficient job in challenging the testimony of victim Patricia Green due to her injuries, the obstruction of her view, and the fact that she had not made a previous identification.
2. Trial counsel was ineffective in failing to object to the admittance of State's evidence, a mask marked State's Exhibit No. 113 and a glove marked State's Exhibit No. 114 due to the missing link in the chain of evidence. Specifically, there was discrepancy in the record who actually found the glove and mask. Testimony from Investigator Roy indicates that he received these items from Detective Stanley (Tr. p. 421, ll. 16 -p. 422, l. 6) while Detective Stanley indicates that he turned the gloves over to a "Deputy Ward" who was not called to testify.

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- Tr. p. 604, ll. 2-12. Mr. Wilder believe that challenging the chain of custody was crucial to these items as they contained DNA that was later used against him.
3. Trial counsel was ineffective for failing to investigate and call Harold Corley as a witness depriving Applicant the opportunity the right to cross-examine and confront the witness.
 4. Trial counsel was ineffective for not objecting to, investigating, nor questioning the warrantless arrest of Applicant.
 5. Trial counsel was ineffective for failing to investigate into the discovery of and the admittance of State's Exhibit 78. Specifically, Mr. Wilder asserts that his trial counsel had paid attention to the testimony of the individual who found the gun, he would have been able to point out inconsistencies in his story. There was testimony presented by Charles Greer, the individual that actually found the gun on the ground. Mr. Wilder asserts that trial counsel should have pointed out that it was several days after the CID searched the premises that Mr. Greer alleged to have found the gun and his version of finding changed somewhat between his statements to law enforcement and his trial testimony. Specifically, Mr. Wilder asserts that trial counsel failed to object to the admittance of this evidence where he could have argued that this weapon held no relevance to the case and that failure to do so biased the case against him when the solicitor argued that this particular weapon was brandished by Mr. Wilder during the commission of this crime.

As per Judge Jefferson's instructions and reviewed the additional requests from Mr. Wilder in light of the proposed order that is to be submitted for her signature.

As to Issue #1- that issued was directly addressed by the court and is included in the proposed order.

As to Issue #2- I reviewed the notes that I took from the Judge's ruling as well as review the proposed order, Judge Jefferson indicates that although you objected to the issues regarding the chain of custody, she found that trial counsel had adequate challenged the issues regarding chain of custody of the evidence. However, in my opinion this is the most important significant issue raised by Mr. Wilder.

As to Issue #3- trial counsel was asked about the testimony of Harold Corley and his statement as given to Deputy Jackson. As indicated in the order, Counsel testified that he saw no reason to make a hearsay objection. He further stated that he had not considered calling Mr. Corley as a witness. Mr. Wilder maintains that counsel denied him the opportunity to cross-examine and confront the witness. Of course, if trial counsel had called Mr. Corley as a witness he would not have been able to cross-examine him but he would have been able to confront him about what he told the officers. Counsel indicated that he did not call any witnesses because of the

Exhibit #1

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preservation of closing argument. Tr. p. 448-450. Mr. Wilder has asked me to bring to the court's attention that there was reason to believe Mr. Corley had given two statements and that option should be explored. While that idea is not inconceivable, there is no indication that any testimony elicited from Mr. Corley would have been helpful to Mr. Wilder's defense but instead would have probably reiterated he saw at least two assailants getting into a white jeep type vehicle, the same type of vehicle that the Defendant's were chased and crashed in. Additionally, it is on record from the attorneys that they had a chance to call Mr. Corley but decided not to do so due to strategic reasons.

As to issue #4- I have no argument regarding the warrantless arrest of Defendant as they were arrested after failure to stop for law enforcement and after a high-speed chase in which they crashed.

As to issue #5- Trial counsel could have challenged admissibility of the weapon arguing that it was more prejudicial than probative under 403. However, it is unlikely that objection would have been sustained. More importantly, under the "hand of one, hand of all" theory, it does not matter if all parties were armed. It is obvious that at least one of the assailants was armed as two people were shot so I do not think that is a strong argument for Mr. Wilder.

As requested, I have made you aware of the additional issues that my client wanted to be addressed. As ordered by Judge Jefferson, I have vetted those issues to see if there were any meritorious issues that needed to be addressed. As previously stated, Issue #2 regarding the chain of evidence for the glove and the mask are the most significant issue that needed to be addressed. However, as an officer of the court, I cannot say that issue would overcome the judge's finding of overwhelming evidence of guilt as described in the proposed order.

Sincerely yours,


Naki Richardson-Bax



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CORRESPONDENCE

January 14, 2015

Rutledge Johnson, Jr. Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Re: Anthony Wilder v. State of South Carolina
2013-CP-10-5655

Mr. Johnson:

I have just been contacted by my client who has informed me that there were two additional matters that I neglected to bring to the court's attention.

Specifically, as I said before, Mr. Wilder believes that trial counsel did not do a sufficient job in challenging the testimony of victim Patricia Green due to her injuries, the obstruction of her view, and the fact that she had not made a previous identification. Mr. Wilder wanted to point out that Ms. Green had testified that she could identify Mr. Wilder from seeing him across the street before the assailants entered her home. Tr. p. 121, ll. 16-18; p. 122, ll. 15- p. 123, ll. 17. However, Mr. Wilder is informed and believes that counsel did not adequately cross-examine Ms. Green as it is clear from the hospital photos that were taken after the car chase, she did not describe him as having a beard which should have been an important descriptive characteristic.

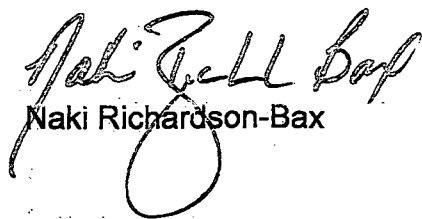
The second issue deals once again with trial counsel's failure to adequately challenge the chain of custody of some of the evidence. Specifically, Mr. Wilder is concerned that there was no attention paid to trial counsel's failure to establish a complete chain when the custodian of property and evidence was not identified. This issue ties into the problems with the DNA found on Mr. Wilder's clothes. Investigator Roy testified to their usual protocol in accounting of evidence, however he was unable to identify who the evidence custodian was in this particular case. Tr. p. 445, l. 23- p. 446, l. 20. Trial counsel failed to object to the missing link in the chain that would have identified the evidence custodian. Trial counsel was defective, in knowing the possible issues of the DNA, failing to further attack the custody as the state could not show that

Exhibit No. 2

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the evidence was not susceptible to tampering or alteration if they could not even identify who the custodian was.

Sincerely yours,



Naki Richardson-Bax

Enc: photos

Exhibit No. 3



Conclusion

Based on the foregoing reasons, Petitioner Anthony Wilder, prose response petition for writ of certiorari should be granted to allow full briefing on all issues.

Anthony Wilder
Anthony Wilder
Petitioner

This 14 day of April, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

Anthony D. Wilder,

Petitioner

v.

STATE OF SOUTH CAROLINA,

Respondent

CERTIFICATE OF SERVICE

The Petitioner hereby certifies that I have served a true copy of a prose response for Petition for Writ of Certiorari in the above referenced case to the South Carolina Supreme Court, this 14 day of April, 2017.

Anthony Wilder

Anthony D. Wilder

Petitioner prose

SUBSCRIBED AND SWORN TO before me

this 14 day of April, 2017.

JC Franklin

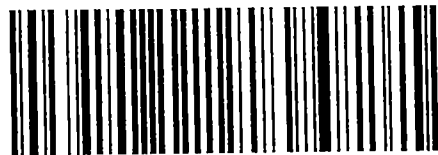
Notary Public for South Carolina

My Commission Expires: 12-16-2019

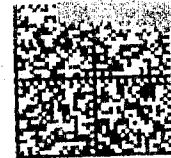
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Daniel E. Shearouse, Clerk of Court
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