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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
County of Richland

THE SUPREME COURT OF
SOUTH CAROLINA

Raqib Abdul Al-Amin
Petitioner

Case No. 2017-000818

V.

State of South Carolina
Respondent.

PETITIONER EXPLANATION WHY THE COURT SHOULD NOT ISSUE AN ORDER PROHIBITING FROM FILING ANY FURTHER COLLATERAL ACTIONS

This matter is before the Court pursuant to a notice of appeal from the denial of Petitioner's Rule 60(b), SCRCP, motion. This Court has given Petitioner twenty days of its Order (dated May 17, 2017) to give reasons he may have why the South Carolina Supreme Court should not issue an order prohibiting Petitioner from filing any further collateral actions in the circuit court, including post-conviction relief actions and habeas corpus actions, as well as any motions relating to the previously filed collateral actions, challenging his murder conviction. Petitioner explanation is a follows:

I. Actual Innocence / Absence of Evidence

At trial, the State attempted to construct an illusion of circumstantial evidence to "prove" that the Petitioner was guilty of murder. However, an

honest examination reveals that nothing that was presented to the jury could establish anything more than guilt of accessory after the fact (accessory) or displacement of a human body,

The Petitioner informed trial counsel that he would be willing to plead guilty to either accessory or displacement, because either plea would be accurate. He admitted that he was guilty of poor judgment, driven by panic which overwhelmed him upon the shocking discovery of a body in his bathtub. He needed time to rationize this surreal scene. Who did this and why?

The Petitioner had been in jail before, so he knew that it was impossible to function there. But he had been guilty then. Now, as an innocent, it was so unfair. His life was evaporating at an alarming rate. Everything was hazy — in slow motion. He needed time to sort things out. Why should he have to explain something he knew nothing about?

The Petitioner and his wife were now living in separate places, Raising two sons on his own. If she learned that he had apparently been in the company of another woman, reconciliation would have been out of the question. He decided that disposing of the body was the only reasonable option. The victim was dead. There was nothing he could do about it that. Why should he become a scapegoat for someone else's foul deed?

Law enforcement and, the prosecution made of his "flight" (to a girlfriend's resident) and his "sanitation" of his apartment, but under these

circumstances, how else could he avoid being sucked into this unfolding tragedy? The Petitioner's "flight" (578 S.E.2d at 37) was not "flight" at all. It was merely a retreat in the hope that time would resolve this awful episode (even) if he engaged in "flight"; flight from what? Accessory? Displacement?

The Petitioner never confessed to the murder of Elizabeth Pryor for the very good reason that no confession was required. He was innocent - factually innocent. Sawyer v. Whitley 112 S.Ct. 2514 (1992); United States v. Mikalayunas 186 F.3d 490, 493 (4th Cir. 1999). If his trial had been fair, allowing him a complete defense (or if trial counsel had presented an Alibi defense), no reasonable juror (as a trier of the facts) could have found him guilty. House v. Bell 547 U.S. 518 (2006).

The Petitioner had reluctantly allow the victim to spend a few hours in his apartment - to escape the wrath of her-in boyfriend, James Conyers (who, not coincidentally, disappeared ["flight"] immediately after the murder). Writ of Cert. App. 1238 at 14-18; App. 713 at 9-11. Pryor and Conyers lived in Apartment 220; the Petitioner lived in apartment 4 (Churchill Apartments).

Pryor told the Petitioner she was hungry that she had not eat recently. The Petitioner provided her with some food. When the Petitioner left with his friend Darcyl Cunningham, go down town to his bank, he told the victim that she could stay briefly in his Apartment, but told that she had to be gone or before or upon his return. The petitioner left

the door to his apartment unlocked when he left with Cunningham on his trip downtown. App. 590 at 1-9; App. 6604 at 20 to 6605 at 2.

The Petitioner and Cunningham made their trip by foot and city bus. But during this time Cunningham returned to the Petitioner's apartment to retrieve items he had "forgotten". App. 1296-1297. See exhibit. One item was a walkman radio, the other was a cold drink he had purchased at a nearby store. On the trip both the Petitioner and his momentary companion, Cunningham, exited the bus at the same time, Id. App. 6605., but Cunningham did not return to the apartment with the Petitioner. (In fact he "fled" the scene. The Petitioner never saw him again until trial.)

Because the state's case for murder was weak that its strategy was to construct the illusion of guilt through the dust distraction and diversion, riding hard on Petitioner's alleged lack of credibilitly and obstructing the Petitioner's efforts to present a complete defense. see Chambers v. Mississippi, 93 S.Ct 1038 (1973). An unsophisticated jury, selected through no more than 7 minutes of individualized examination (if, indeed we dignify this vacuous process as any kind of "examination" at all) was easily duped by this strategy. There was, in truth, no real adversarial testing. The Petitioner became an unarmed soilder of misfortune.

The evidence adduced at trial, when viewed fairly, fully and objectively, was clearly inconclusive of murder. Particulalty instructive in this regard is the recent case of House v. Bell, 126 S.Ct 2064 (2000),

similar in so many ways to the Petitioner's case herein. Futhermore, "mere suspicion", no matter how strong, tempting or suggestive, is never a substitute for proof and can never form the foundation for a conviction.

The absence of evidence for murder by the Petitioner (a carefully-developed timeline even precluded that possibility) is a classic case of insufficiency requires reversal in federal Habeas Corpus under Jackson v. Virginia 99 S.Ct 2781 (1979).

A critical analysis of the state's case demonstrates;

1. The Petitioner was never placed at the scene; App. 307 at 25; pg. 308 at 1-12; See, e.g State v. Martin, 533 S.E.2d 572 (2000), and State v. Schrock, 322 S.E.2d 450 (1984);

2. No motive was ever even suggested by the State; See, e.g., House v Bell, 126 S.Ct 2064 (2006);

3. Neither intent nor premeditation could be assigned petitioner.

Even if it could be said that intent could be implied through the use of a deadly weapon, the State could never say, let alone prove, that the Petitioner struck any blows. Moreover, Arnold v. Evatt, 113 F.3d 1352 (4th Cir. 1997), predated our state case of Belcher v. State, 685 S.E.2d 802 (2009) by more than twelve (12) years and specifically and unambiguously

declared that malice may not be implied by the use of a deadly weapon (at 1356). Arnold was controlling law at the time of the Petitioner's trial and the time of the offense charge;

4. None of the forensic evidence (for murder) implicated the Petitioner;

5. The prosecution and the trial court combined to exclude sperm DNA evidence, which exonerated the Petitioner. See App. 396 at 4-19,. Since, as in House, THE JURY COULD HAVE CONCLUED THAT THE MURDER OF THE VICTIM REVOLVED AROUND (or included a sex act fresh sperm was found in the victim's vaginal vault), it was error for the jury not to have heard and considered this factual evidence; see App. 289 at 18-24; App. 290 at 8-13;

6. Although the state lobbied feverishly to prevent the sperm DNA evidence from being introduced, claiming it was irrelevant, it insisted upon introducing "drug" "evidence", but never explained why the crack pipe found in the victim's pants was never tested to determine if it had ever been used, or, if so, whether any drug residue was consistent with the "drug" alleged to be used at the crime scene.

7. No saliva or fingerprint evidence was taken from the crack pipe to determine who might have touched it or used it. No saliva evidence was

ever taken from part of the victim's body (lips, breasts, vagina, etc.) to determine who had this kind of intimate contact with her.

Because the state could not prove its case for murder by the Petitioner, it shamelessly resorted to ambushing the Petitioner with the Petitioner with an allegation of "flight". ("Flight may serve as some evidence of guilt, but guilt of what?) as well, the state suggested that his prior conviction (which incidentally, involved no physical harm to anyone) damaged the Petitioner's credibilty and that 'drugs' were present at the scene. But so what? None of these diversions, designed to distract the attention from its factual Mission, could establish the Petitioner's guilt as a principle in this case.

Let us examine the state's evidentiary house of cards (which the state claimed represented substantial circumstantial evidence of murder by the Petitioner). See State's Return to Petition for Writ of Writ of Ceriorari, case No. 97-GS-40-25414, Supreme Court of South Carolina, sumitted March 22, 2004, pp. 3-5.

1. Eyewitness (allegely) saw Al-amin (the Petitioner) dragging an object similar to the shape of a human body in a blanket (not evidence of murder by Petitioner);

2. Eyewitness (same as in (1) found a body wrapped in a blanket in a dumpster (not evidence of murder by Petitioner);

3. Repeats (2);

4. Dumpster is near Petitioner's apartment (not evidence of murder by Petitioner);

5. Petitioner's apartment had been cleaned and "processed" (not evidence of murder by Petitioner). (But not mentioned by the state the alleged murder weapon was found in the Petitioner's apartment. If the Petitioner had known that this weapon existed because he had used it himself, he certainly would not have clumsily hidden it in his closet. He would have surely disposed of it during "processing".);

(6)(7) and (8) Human blood found inside the Petitioner's apartment (not evidence of murder by the Petitioner). (Not mentioned by the state. The Petitioner did not have multiple scratches on his face at the time of his arrest. He had only a single scratch. The State could never demonstrate that this was a defensive "wound", nor that this scratch could be connected to a struggle between him and the victim, nor was any of the Petitioner's blood ever found at the crime scene nor on the victim's body.);

9. The Petitioner was the only resident of his apartment. (This is irrelevant, since the Petitioner and the victim had multiple guess on that day of the victim's death in the Petitioner's apartment - including, at least, Darryl

Cunningham, Jerry Watkins and an unknown male ("Froggy?") never identified not to mention any visitors the victim had when the Petitioner was away from his apartment.);

10. The Petitioner's bed had no blanket or bedspread on it (hardly evidence of murder);

11. "Murder weapon" found in the Petitioner's apartment (see also (5).) If the Petitioner had actually known of the existence of this object — a bolt — as a murder weapon, he certainly would not have clumsily hidden it in the apartment. He would have disposed of it.);

12. "Weapon" said to be "consistent" with wounds on the victim's body. (Does not prove murder by the Petitioner.);

13. The Petitioner left the day of the incident. (Of course he did. He was guilty of disposing of a dead body, but not of murder.);

14. The Petitioner's face had recent scratches (see also (6), (7) and (8). (There was only a single scratch, which was never connected to any struggle with the victim.) (Not mentioned by the state: The forensic evidence, gather by the state, demonstrated conclusively that the scraping taken from under the victim's fingernails did not match the Petitioner's DNA.) (The police never attempted

to ascertain the source of this damning DNA. Such investigation would have identified the real perpetrator.);

15. The petitioner made inconsistent statements about his scratch[es] (plural). (There was only a single scratch, unassociated with the victim. In any event, it was not the Petitioner's duty to disprove his guilt. Proof of guilt is a burden borne by the state. The State did not carry its proof because DNA evidence proved that there was no connection between the scratch and the victim.);

16. The Petitioner was seen with the victim the day of the day of the murder. (So were multiple other males. See App. 650 at 4-11. The Petitioner never denied that the victim was in his apartment when he left — but alive [Corroborated by Cunningham]);

17. The Petitioner gave the victim "drug" on the day of the murder (even if he did, which was not substantiated by any forensic evidence, the victim was well-known as a "crack whore" who routinely accepted "drugs", or the money to buy drugs, from anyone. This does not even remotely suggest murder.

The Petitioner's case was the product of very shoddy police work — rush to judgment. But even

So, all of the forensic evidence allowed at trial exonerated the Petitioner. Even the evidence withheld by the State exonerated the Petitioner. But the jury was never permitted to hear the latter.

The Petitioner's case represented a peculiar form of a serious Brady violation, which made it impossible for him to obtain Due Process through the vehicle of a fair trial. Brady v. Maryland 83 S.Ct 1194 (1963). The Police and the prosecution colluded to withhold critical evidence from the Petitioner and the jury, and to subvert the truth-seeking process, by a devastating combination of:

a. Neglect;
b. Obstruction; and
c. Distraction.

(a.) The police utterly neglected to develope any comparative profile of evidence as to the Petitioner, Darryl Cunningham, James Conyers, Jerry Watkins or any other males in the company of the victim on the day of the crime.

Neither the police nor the prosecution question the peculiar nature of Michael Watkin's statement and subsequent testimony — or his potential connection to the victim or Jerry Watkins, (his brother) have a personal bias in this case? Were they in cahoots with James Conyers to eliminate the victim (as embarrassment to the Watkins family name), finding the Petitioner a convenient

scapegoat? And where are Michael and Jerry Watkins at the time of the murder (they both had unlimited access to apartment 4, as manager and assistant manage? Why did Michael refuse to talk to the investigator for the Petitioner's counsel? And why did he give inconsistent statements about a mysterious man name "Froggy", who might have been the unidentified male in this drama? Petitioner asked this court to take "JUDICIAL NOTICE" of After-discovered evidence; Affidavit of Danny O'Neal Brown aka Frog, dated May 13, 2015.

The Police neglected to pursue James Conyers as the most likely suspect, since he was the victim's lived-in boyfriend, had quarreled with her on the day of her murder (to the extent that she sought refuge with the Petitioner), and conveniently fled the scene "flight" immediatently after her murder. See Writ of Cert. App-1238 line 14-18; App. 713 at 9-11. Even police testimony at trial demonstrated that "family" is the most usual starting point for identifying a suspect in a case such as this.

The police neglected to gather any saliva or fingerprint evidence, nor any toxicology evidence (documented).

The Police neglected to gather any video evidence from the back or the neighborhood store to establish a timeline for the Petitioner (which would have exonerated him, in and of itself, and which was ready available).

In short, the police committed the functional

equvalent of a serious Brady VIOLATION by failing to develop and disclose enough evidence to present a full Picture to the jury and to allow the Petitioner to develope and present a complete defense.

b. The prosecution engaged in a tactic of obstruction to prevent testimony from the defense which the prosecution falsely characterized as "third party guilt" evidence when, in truth, it was no more than the Petitioner's attempt to exonerate himself. App. 387-396. The Petitioner's effort to present forensic sperm DNA evidence which cleared him of the victim was frustrated by the prosecution on the pretex "THIS IS NOT A SEX CASE." But such a tactic runs afoul of the principle in Holmes v. South Carolina, 126 S.Ct 727 (2006), which holds that a jury must not be compelled to view a case exclusively through the lens of the State's theory of the case. Thus, due Process was thwarted. (The victim was found in a sexual position and the State decided to take sperm DNA evidence, so the state must have suspected a sexual element to this crime. But when this evidence exonerated the Petitioner, it tightly guarded).

This obstructionism made a mockery of Brady, BY PREVENTING THE INTRODUCTION of critical evidence, develope by the State, but which proved exculpatory for the Petitioner.

C. The State plugged the large holes in its case with dust of distraction. Since the Petitioner's defense was one of denial, this required him to take the

stand — because his trial counsel was ineffective for failing to interpose the valid trial strategy of Alibi, thus keeping him off the stand and requiring the State to prove his presence at the scene of the crime. See e.g., Roseboro v. State, 454 S.E.2d 312, 313 (1995), State v. Porter, 109 S.E.2d 216, 229 (1959),

The prosecution then, without any determination by the court of the reason that the State could justify the Petitioner's the introduction of prior armed robbery conviction, proceeded to do so. No probative value / prejudicial effect analysis ever occurred. The state argued on appeal that this information could be introduced under Rule 609 (a)(2), because, in its opinion, armed robbery was a crime of dishonesty, and thus, automatically admissible to impeach the Petitioner's credibility.

No one at the appeals seemed to notice the State did not advance this argument at trial, nor that armed robbery was not considered a crime of dishonesty at the time of the Petitioner's trial.

In fact, the Court of Appeals, in its opinion, State v. Al-Amin 578 S.E.2d 32, 37 (Ct. App. 2003), noted that this proposition by the State was one of novel impression, but the Court never connected the dots to declare that under ex post facto analysis, it could only apply AL-AMIN PROSPECTIVELY ON THIS ISSUE, and certainly not to AL-AMIN himself. To do so would be to hold AL-AMIN to a legal standard not in existence at the time of his crime on trial. (Issue raised in the previously filed collateral action).

There was no physical evidence nor any testimonial

evidence —— to link the Petitioner to the crime scene or the victim's murder. As in State v. Turner, 109 S.E. 119 (1921). "His conduct after the homicide cannot convict him of an offense that the State failed to prove." "While the . . . case raised a suspicion . . . it did not warrant a verdict of guilty." State v. Epes 395 S.E.2d 769, 786 (1946).

The actual killer left the "murder bolt" behind intentionally. It was the only object which could conclusively connect him to the murder. He had to leave it, so not to be seen or caught with it — and to serve the very useful purpose of setting the Petitioner up as a convenient scapegoat. Its inevitable discovery would surely "hang" the Petitioner, since the Petitioner would never know to look for it.

Since the Petitioner's credibility was central in this case and there was no physical evidence and no identification evidence which established the Petitioner as the murderer, this Court must be guided by Crane v. Kentucky, 106 S.Ct 2142 (1988) in determing that he never enjoyed a meaningful opportunity to present a complete defense.

Moreover, particulary and critically absent from the State's case at trial (and also absent from trial counsel's defense of the Petitioner) was any evidence or discussion of whether the Petitioner even could have physically committed this crime, given the positions of the victim's wounds. Were they inflicted, for example, by a left-handed assailant or a right-handed assailant? And were the strangulation contusions consistent with Petitioner's hands?

Why did the State battle desperately to deflect evidence of an obvious sexual element? The victim's body was found in a sexual position. Fresh sperm was in her vaginal vault — but not the Petitioner's sperm. Why was no pubic hair evidence collected?

If collected evidence did not suit the State's theory of the case it was either withheld or Petitioner's attempts to introduce it were frustrated and foiled.

The cumulative effect of the:

a. Misleading and irrelevant "evidence" presented by the State;
b. Exacerbated by the failure of the police to develop a complete picture of the evidence;
c. The failure of the court to allow a complete defense to be presented;
d. The unrelenting campaign by the prosecution to subvert the truth-seeking process, and
e. The prosecution's strategy of distractions, as a subtitute for a real case for murder;

made it impossible for the Petitioner to receive a fair, reliable trial. See Kyles v. Whitley, 115 S.Ct 1555, 1558 (1995). United States v. Bagley, 105 S.Ct 3375 (1985); and State v. Freeman 459 S.E.2d 867 (App. 1995). This cumulative effect constituted a constitutional violation under clearly-established federal law.

The actual test for the reliability of a jury's verdict is whether the cumulative effect of all of the suppressed factual evidence, not the evidence

consider piece by piece (item by item) was prejudicial. Kyles at 1558; Bagley at 3380.

Did all of the errors at trial undermine confidence in the trial? Would reasonable jurors have reached a different conclusion absent the accumulation of errors. The Petitioner argues they would have. (The 4th Circuit has recognized that cumulative error may justify reversal. United States v. Martinez, 277 F.3d 517, 532 (4th Cir. 2002) and United States v. Kerley, 838 F.2d 932, 937 (7th Cir. 1988) held that the cumulative effect of unobjected-to errors is plan error because the errors were of such great impact that they probably changed the outcome of the trial.

In the Fourth Circuit a claim of actual innocence "must be found upon factual innocence". Quite naturally, from factual innocence flows legal innocence. United States v. Mikalajunas, 186 F.3d 490, 493 (4th Cir. 1999).

The Petitioner herein is actual innocent of murder as a principal (with which he was charged.) There was, in truth, no substantial evidence of murder by the Petitioner, only of accessory after the facts to support a murder conviction, in violation of federal law.

Clearly, established federal law, as announced by our United States Supreme Court, requires that the State furnish unambiguous due process and that the accused have effective assistance of counsel.

II. Previous Action

As to the matter of Petitioner Rule 60(b), SCRCP, motion, Petitioner alleged Fraud upon the Court,

a. It was fraud upon the Court where Officer J. P. Smith interject his exercise of power in Petitioner's case by providing a forge instrament to the Court.

b. That Respondent commit fraud upon the Court to get the benefit of an Inference that Al-Amin was not allowed to challenge was fraud upon the Court.

Facts

The Respondent committed fraud in its bifurcated closing, the Respondent said this:

"They've got not one shed of physical evidence. That's what they said. That's what they hollered in their opening. Not one shred of physicall evidence. Well, he destroyed it all. He cleaned it all up and then where — where the right becomes wrong because we don't have the evidence that he destroyed."

Trial transcript, February 18, 2000, page 728, line 10-15.

But of course they did have DNA evidence and Darryl Cunningham. Had this evidence become known "it would have raised a reasonable inference or presumption" as to Al-Amin's own innocence,

defense counsel could have argued that there was at least two (2) pieces of evidence that the police did not bother to investigate because it did not point to the guilt of Al-Amin.

It was fraud when they knew Darryl Cunningham was part and parcel of the evidence in this case, because it might have suggested that someone else should have been investigated by the police in connection with this crime. Furthermore, Respondent took unfair advantage of the Court ruling.

In addition to the burden shifting, the Respondent's remarks unfairly buttressed the quality of the State's investigation by suggesting there simply was no additional (physical) evidence involved in this case.

Although the police did not investigate Darryl Cunningham but contend that Darryl Cunningham violated the proscription against third-party guilt (not mention by the State), the Respondent is deliberatly denying Al-Amin from elicitating exculpatory evidence and admission to investigation process and collection. The jury should be allowed to hear their reason, if they have one, and evaluate its appropriateness.

Doctor Sally Harding

That Doctor, Harding gave her job description as such:

"An autopsy is the complete examination of a

body after death. Again, to define either the types of injuries and extent of injuries or the types and extent of disease. And we start by completely examining the external appearance of the body documenting with diagrams or photographs and a written description what changes from normal that we might see. After we completely examine all external surfaces, then we open the major body cavities and examine internal organs."

Trial transcript page 424, lines 4-12.

Petitioner contends that the Respondent and trial counsel commit Fraud upon the Court when they alleged they could not estimate a time of death.

The Respondent mislead the Court when they presented Dr. Harding who testified that the time of death could not be estimated except, "with less than 24 hour period of time."

Consequently, this fraud upon the Court was further suborned by trial counsel. Thus major deficiency in trial counsel's performance occurred when counsel failed to call for cross-examination a critical witness, Darryl Cunningham, just before the defense rested. "Mr. McMahan, you could have called this witness in your case in chief and so you don't have the liberty with him you had previously if you call him as your witness. Mr. Strickler could have called him as his witness, still can call him because he hasn't rested."

Trial transcript dated February 15-18, 2000.

Even the Court hinted to trial counsel about this opportunity, when counsel learned that he would be limited in the scope of his examination of Cunningham as a "REPLY WITNESS" for the Respondent.

The fraud is immediately apparent when Ak-Amin and Darryl Cunningham are present at the date and place of the murder, there must be evidence showing that Al-Amin struck the fatal blows. The jury found that Ak-Amin committed the murder — by fraud, but, made such finding in ignorance of the withheld evidence and testimony: Did Ak-Amin returned to his apartment?

Trial Record, dated Feburary 15-18, 2000.

Cunningham was the sole witness who could absolutely exonerate Ak-Amin by accounting for Ak-Amin's whereabouts, demonstrating, as he could, the timeline which would exclude Ak-Amin from his apartment at the time of the murder. Petitioner asked this court to take JUDICIAL NOTICE of Darryl Cunningham trial testimony, dated February 15-18, 2000 page 657-666. Because trial counsel had not memorialized Cunningham's prior statements, either in writing or on tape, and had not ascertained with certaintly what his testimony would be, he utterly failed Ak-Amin. Al-Amin's absolute right to confrontation of an adverse witness under Davis v. Alaska 415 S.Ct 308 (1974) and Crawford v. Washington 541 U.S. 36 (2004).

C. The Respondent did commit fraud upon the Court when they lead the Court to evaluated the case through the lens of the Respondent's theory to determine whether the evidence should be admissible. Bobby lee Holmes v. South Carolina 547 U.S. 319, 126 S.Ct 1727, 164 L.Ed.2d 503 (2006). The Respondent commit fraud upon the Court when they:

1. Never placed Al-Amin at the scene; see e.g. State v. Zelgler, 364 S.C. 94 (2004); State v. Martin, 533 S.E.2d 572 (2000); State v. Sehrock, 322 S.E.2d 450 (1984).
2. Never suggested a motive; see e.g. House v. Bell, 126 S.Ct 2064 (2006);
3. Could not assigned neither intent or premeditation to Al-Amin. Even if it could be said that intent could be implied through the use of a deadly weapon, the Respondent could never say, let alone prove, that Al-Amin struck any blows;
4. Had no forensic evidence (for murder) implicated Al-Amin;
5. The Respondent and the trial court combined to excluded sperm DNA evidence and Darryl Cunningham, which exonerated Al-Amin. Trial transcript page 396, line 4-19. Since, as in House, the jury could have concluded that murder of the victim revolved around (or included) a sex act, fresh sperm was found in the victim's vaginal vault, it was error for the jury not to have heard and considered this factual evidence;

6. Although the Respondent lobbied feverishly to prevent the sperm DNA evidence from being introduced, claiming it was irrelevant, it insisted upon introducing "drug" evidence, but never explained why the crack pipe found in the victim's pants was never tested to determine if it had ever been used or, if so, whether alleged to be use at the crime scene.

7. No saliva or fingerprint evidence was taken from the crack pipe to determine who might have touched it or used it. No saliva evidence was ever taken from part of the victim's body (lips, breasts, vagina, etc) to determine who had this kind of intimate contact with her.

Because the Respondent could not prove it case for murder by Al-Amin, it shamelessly resorted to ambushing Al-Amin with an allegation of "flight." (Flight may serve as some evidence of guilt, but guilt of what?) as well, the Respondent suggested that his prior conviction (which incidentally, involved no physical harm to anyone) damaged Al-Amin's credibility and that "drugs" were present at the scene. But so what? None of these diversions prove Al-Amin guilt as a principle in this case.

d. It was a <u>miscarriage</u> of justice when the Respondent interfered by obstruction, distraction and neglect by

1. Commit fraud upon the Court to <u>deliberately obstruct</u> efforts of Al-Amin to exonerate himself,

by claiming that Al-Amin's effort, for example, to exonerate himself by question the absence of a complete police investigation amounted to a defense of third-party guilt [see Kyles v. Whitley 514 U.S. 419, 115 S.Ct 1555 (1995)].

2. Commit fraud upon the Court to deliberately obstruct Al-Amin's efforts to admit sperm-fraction DNA evidence (exonerting Al-Amin) in a case which contained a potential sexual element. Trial transcript page 289, line 18-19, due to the position in which the victim's body was found (with pants and underclothing pulled down fresh sperm in her vaginal vault). Trial transcript page 603, line 14-25 and page 604, line 1-3. see House v. Bell, 547 U.S. 518, 128 S.Ct 2064 (2006). The Court is not obligated to accept the Respondent's theory of the case;

3. Commit fraud upon the Court to deliberately distract the jury from the facts of the case by impugning his credibility with the introduction of a prior conviction without any justification for its introduction;

4. Commit fraud upon the Court to deliberately distract the jury with an allegation of "flight" without reminding the jury that "flight" only suggest some evidence of guilt, but not necessarily of murder itself;

5. Commit fraud upon the Court to deliberately embrace a half-hearted, incomplete police investigation which did not encompass a full range of evidence which would have exonerated Al-Amin [because it did not suit the Respondent's

theory of the case) (such as, but not limited to, thorough evaluation of Darryl Cunningham, Jerry Watkin's and James Conyers, to include Conyers contemporaneous conflict with the victim, his "flight" immediately after the homicide. The collection (which never occured) of DNA evidence to determine the source of the DNA under the victim's fingernails (not Al-Amin's DNA), the source of the sperm fraction in the victim's vaginal vault. But clearly the Respondent committed fraud upon the Court when they did deem it "RELEVANT," at least during their investigation. Such that they had Al-Amin's DNA tested against it. Trial transcript page 393, line 13-23. Darryl Cunningham's DNA was tested against it, as well. His results came back on January 26, 2000, less than a week before trial. The Respondent thought it sufficiently "RELEVANT" even at that late date, a mere five (5) days before the first trial. The source of the crack pipe found in her clothing (and the saliva on it), and whether Conyers was left-handed or right-handed, and whether the strangulation marks match his hands;

6. It was fraud upon the Court to deliberately neglected unreconciled contradition in witness Michael Watkins' testimony, his relationship to the victim and to Jerry Watkins, his where abouts at the time of the murder (he had unlimited access to Al-Amin's apartment), his duplicitous evasions concerning the activities in the immediate vicinity of the victim of a man by the name of "Froggy."

(Affidavit of Danny Brown is before this Court and another unresolved after-discovered evidence) and Watkins own personal agenda in this matter.

7. It was fraud upon the Court to deliberately clouded the trial with irrelevant information, or information which obscured the central issue of guilt or innocence of homicide by Al-Amin, in violation of the principle announced in United State v. Richards, 207 F.3d 177 (5th Cir. 2000), which prohibits the dragging in of information which serves no legitimate purpose, but serves only to impugn the integrity of the Petitioner and to obfuscate the actual facts. (i.e., for no legitimate evidentiary purpose). To illustrate, the gratuitous introduction via the "reply" testimony of Darryl Cunningham of the "evidence" of 'drugs' by the Respondent presented the introduction of sperm evidence which had a far more likely connection to the identity of the killer).

The Petitioner herein has furnished a plethora of reasons, evidence and record supporting why this Court should not issue an order prohibiting Al-Amin from filing any further collateral action.

Conclusion

Petitioner, hereby moves this Honorable Court for Rehearing and Rehearing En Banc, and respectfully seeks an Order in accordance to 28 USC § 2106 granting, vacating and remanding ("GVR"); also Rule 59(e), SCRCP, back to the circuit court to re-open the time and appointment of counsel.

Respectfully submitted

Raqib Abdul Alamin #266465
MCCI 2-B-128
386 Redemption Way
McCormick, S.C. 29899

The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
Honourable Judge D. Beatly
Post Office Box 11330
Columbia, South Carolina 29211

May 30, 2017

Honourable Judge Beatly,

This is a classic case of our legal system goes wrong. After 20 years this is the continuation of an attempt to find justice. The suffering endured by myself and family is incalculable. The principle of Actual Innocence could have been crafted with me in mind.

Consider that....

You and your wife dine at a nice restaurant, then exit to your parked car. But you realize, just as you seat your wife in the front passenger's seat, that you have left your wallet in the restaurant. You return to the restaurant to retrieve your wallet. When you retrace your steps to your car you find your wife dead — and your pistol is in the floor-board between her legs. Your first reaction is complete shock, then you ask yourself, "Oh Lord, why me?

Your honour, my case herein bears eerie similarities to the story just recalled, with the exception that the story just recalled, with the exception that ~~I~~ has now suffered 20 years, not five(5). I am married to a wonderful supporting wife. I am a father of four (4) children and four grands.

At that time, my wife and I, were in a strained

relationship. So, I rented an sperate apartment accross town, tempararily, achieve some personal "space."

I moved into Churchhill Apartments, one month prior to death of Ms. Elizabeth Pryor. I did not know any of the tenants. I casually learned that Ms. Pryor, along with her live-in boyfriend, Conyers, rented Apt. 220, on the second floor.

My best friend, Tyrone McCants, and I were two young entrepreneur painter's, 3P's painting here in Columbia. I was raising my two sons, while the other two children were with there grandmother. I had responsibilities.

That morning of August 25, 1997, Pryor came to my apartment and asked for food. She reported that she was broke, had no food, and that she and Conyers had been quarreling, and that she was afriad to return to her apartment for fear of physical violence from Conyers. I had plans for the day. I to the apartment to get the children dirty clothes, then, head back across town to get my youngest, It was the first day of school, neither of us (Darryl Cunningham and I) had transportation, so, it was by foot and bus. So, I got Ms. Pryor something to eat and reluctantly allowed her to stay, to escape the wrath of her boyfriend. I had no reason at all to harm Ms. Pryor.

Your honour, please look into the record, Cunningham

reported that he had returned to my apartment because he had left his walkman radio behind. Cunningham testified at trial as a "Reply Witness" to drugs present. However, testified that Payor was at the apartment when he returned, that "she let him in." Trial record 658, line 5 I was not there. He was another witness whom could have totally exonerate me. The trial record is also void of a Alibi for Cunningham.

My case herein bears eerie similarities to the story just recalled, with the exception that I now suffered 20 years, not five (5) due to entirely to bizarrely bad luck, very bad lawyering (both trial and appellate shaddy police investigation and prosecutorial misconduct.

Last, I asked this Court to also consider section 24-13-233, that it may provide, whereby reduction of sentence, by adding Article 7, to Chapter 27, Title 24.

Thank you for your time and in hope and faith you consider my petition.

Raqib Abdul Alam:)

STATE OF SOUTH CAROLINA
County of Richland

THE SUPREME COURT OF SOUTH CAROLINA

Case No. 2017-000818

Raqib Abdul Alamin #264465
Petitioner,

v.

CERTIFICATE OF SERVICE

State of South Carolina

I hereby certify that I have served an Explanation Why this Court Should Not Issue An Order Prohibiting Petitioner from filing Any Further Collateral Action to the South Carolina Supreme Court, P.O. Box 11330, Columbia, S.C. 29211 by depositing a copy of the Motion in the United States mail, postage prepaid May 29, 2017.

Respectfully submitted

Raqib Abdul Alamin 264465
McCormick,
386 Redemption Way
McCormick, S.C. 29899

Raqib A. Alamin 266665
McCormick 2-B-128
3866 Redemption Way
McCormick S.C. 29899

Honourable Judge D. Beatty
The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk
Post Office Box 11330
Columbia, South Carolina 29211

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