

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Judge

KEIRON K Coleman

PETITIONER

V.

STATE OF South Carolina

RESPONDENT

APPELLATE CASE NO. 2018-000088

PETITION FOR WRIT OF CERTIORARI

RECEIVED

OCT 16 2018

S.C. SUPREME COURT

ISSUE PRESENTED



Whether petitioner's conviction should be reversed because trial counsel's failure to request the state to produce "critical evidence" as defined by Black's Law "Evidence strong enough that its presence could tilt a juror's mind. Was that an "item" was found in a Newport Cigarette pack belonging to states star witness ms Shkerra Cowan that the jury had the right to know its contents after it being testified to at trial the Brady rule is that any and all evidence scene evidence addressed at trial should be in the defendant's discovery for examination prior to trial. The mention of the item during trial was newly discovered for the fact prior to trial there is no evidence of its existence" It's not in the evidence report or chain of custody or in my discovery package. If not for officer Natalie Boyd "Okay, And at any point, did you remove anything that did belong to the driver from the car? App 254-9-10. "Yes, I did. App 254-11. "It was a pack of Newport it was a Newport cigarette box, which was empty and other than, as far as cigarette go, and it had an "item" in it. App 254-12-14. "And through your investigation, did you find out if that belonged to the driver? App 254-17-18. "Yes I did. App 254-19. "Okay, And did it belong to the driver. App 254-20. "Yes it did." App 254-21 This Newport box with the item was given to officer Rick Eibbott where it went from there is not known or asked by counsel during his cross examination of any of the states witness. Constitutes ineffective assistance under the Sixth Amendment. Brady v Maryland 373 us 83 83 S.Ct. 1194 (1963)

STATEMENT

On May 30, 2013 an Horry County grand jury indicted petitioner for first-degree burglary App 540. On March 12, 2014 petitioner was tried before the Honorable Larry B. Hyman Jr., and a jury. App. 1. George DeBusk, Jr and Nancy R. Livesay represented the state. App. 2. J. M. Long, III represented petitioner. App. 2. The jury convicted petitioner. App 437, 1. 1 - 441, 1. 18. Judge Hyman sentenced petitioner to twenty-five years' imprisonment. App. 448, 1. 11 - 449, 1. 5. The court of Appeals affirmed petitioner's conviction State v Coleman Op. NO. 2015-UP-386 (S.C. Ct. App. July 29, 2015) On October 20, 2015, Petitioner filed a PCR application App. 433 On September 18, 2017, the Honorable William H. Seals held a hearing. App 514. Daniel A. Selwa II, represented petitioner App 514. Johnny Ellis James, Jr. represented the state App 514 On December 6, 2017, Judge Seals denied petitioner's application. App. 568. This petition follows.

Standard of REVIEW

The standard of review in PCR cases depends on the specific issue before the court. A PCR court's findings of fact will be upheld if there is evidence in the record to support them. Sellner v State 416 S.C. 606, 610, 787 S.E. 2d 525, 527 (2016) (Citing Jordan v State, 406 S.C. 443, 448, 752 S.E. 2d 538, 540 (2013)) Questions of law are reviewed de novo with no deference to trial courts.

ARGUMENT

Petitioner's conviction should be reversed because trial Counsel failed to request to see the "item" found in States witness MS Shakeria Cowan pack of Newport cigarette box which contained an "item" the state failed to identify what the item was concealed from the jury so a judgement could not be made of what it was. The "item" or pack of cigarettes were not at trial for exhibit or confrontation, the fact that it was not identified was further deception by the state and if not for Officer Boyd slip up the defense would have never known the item even existed and the court did not inquire what this nameless "item" was for to be clear" Counsel could have argued that the state tried to hide the evidence since it was not there core production and that in fact in there was a marijuana joint that she smoked minutes before arriving at the Ross and Marotte house's and the reason why she didn't know where we went or what was going on is because she was "High" under the influence" deprived of clearness of mind and self-control because of "drugs" or alcohol "Black's Law" even after finding two bags of marijuana in the front seat when the marijuana joint in her pack of cigarette the officer called to test her with a drug strip that they use in drug test even after charging her with marijuana possession Counsel could have argued her being under the influence and possession marijuana would render her incompetent.



" Okay, now, when you see at the first house when you
 dropped them off, okay, they both get out of the
 car? App 293 - 20-22 " uh-huh App 293 - 23. Okay. And at
 this point, what do you think was going on? App 293 - 24-25.
 I really wasn't paying attention. I was listening to music, smoking
 a cigarette. I thought he was just going to a friend's house to get
 something, or whatever it is, "I don't know". I was just dropping
 him off. App 294 - 1-5 She was asked the same question on
 cross this is what she said " I was listening to music while
 I was still looking around. I mean, you can kind of see if
 someone's going from the front of the house or the back of
 the house. App 312 - 9-12 She initially said she saw nothing
 then, she saw as going from the front to the back of the house
 same house different story. Now this is what she first said
 "when we went to the victims home Mrs Morote " I didn't see the
 guy in the back seat with anything, but Coleman had quite a few
 things in his pockets when he came. App 292 - 23-24. " Back. App
 293-1. Then her second time asked " A bunch of boxes, and then
 like a couple of bags. And it looked like jewelry may be in
 there. A couple of pictures and a little gadgets. App 295 -
 12-14. It went from "quite a few things in his pockets when
 he came back. To a whole list of things her story again changed
 which could have been contributed to the marijuana she admitted
 that she smoked marijuana " Well, I smoked weed and he
 was offering to smoke with me. App 308 - 4-5 and with marijuana
 found in the car and in her cigarette pack these points could have
 been used to show her mind state was questionable.

The PCR court erred in finding neither deficient performance nor prejudice App 575-576 See Strickland v Washington 466 US 668 (1984) The court erred stating that Counsel first elicited testimony from Cowan to indicate she smoked marijuana on the day in question. App 580 when in fact he never impeached her at all she volunteered the information about her smoking marijuana because the question asked by Mr Long had nothing to do with marijuana "Strange man, never met before, never talked to before, two minutes and he's in your motel room? App 308-2-3 Petitioner said he failed to impeach her on the item both Officer Boyd and MSCowan and the following should have been asked by Counsel App 551-8-14 "The court finds that Counsel achieved whatever limited impeachment value may have existed by virtue of Cowan's marijuana possession and use through his cross-examination of the witness. Accordingly the court finds no deficiency of Counsel nor prejudice therefrom and Applicant's request for relief as to this allegation is denied App 580 Counsel could have argued US v Bagley 713 US 667, 87, 1 Ed. 2d 481, 105 S. Ct 3375 (1985) A prosecutor's failure to disclose evidence that could have been used effectively to impeach important government witness requires automatic reversal. "The undisclosed evidence is material only if its suppression might have affected the outcome of the trial. Thus the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that is suppressed. Would deprive the defendant of a fair trial..."

The court rejected any distinction between impeachment evidence and exculpatory evidence and stated "Impeachment evidence, however, as well as exculpatory evidence, falls within the Brady rule. There is no record to what even happen to the "item" or pack of cigarette Counsel failure to request production of the item falls below standard the prejudice suffered is not knowing where the evidence went and by it being lost Counsel could have used that to show the state had something to hide the item and what happen to it was just as critical to the defense and Counsel's failure to inquire is ineffective assistance counsel by the law. Thank you from the Coleman Family

P.S. My respects to the victims

Keiron Coleman, #359333

vs.

State of South Carolina

Re: Admissibility of tainted testimony coming in as government evidence vs
Invoking prosecution's witness's right to testify.

My allegation was not bent on trying to invoke Ms. Shakerra Cowan's right to testify or miranda right, but instead it was meant to question Ms. Cowan's tainted testimony made pre-miranda being allowed as State's evidence. Illegally obtained testimony due to a miranda violation is only allowed under the miranda exceptions: (1) Being voluntary statements made after proper miranda warnings; (2) for impeachment purposes; and (3) Case in chief, use or exclusion of evidence the court carefully adheres to principle that fruits of custodial interrogation absent miranda warnings be excluded from evidence in State's case in chief permitting a narrow exception only where pressing public safety concerns demand. Oregon v Elstad. But Ms. Cowan's testimony was the product and fruit of the poisonous tree as were the same statement she originally gave to the first officer (Officer Rick Tibbot) then the second to Officer Natalie Boyd and the third to Det. Scott Bogart.

Consequences of the miranda violation statements obtained as a result of custodial interrogation when the suspect was not advised of and voluntarily waived his or her right are presumptively inadmissible in the government case in chief.

Rule 1003, Admissibility of duplicates: A duplicate is admission to the, to some extent as an original unless: (1) A genuine question is raised as to the authenticity of the original; (2) Or in the circumstances it would be unfair to admit the duplicate in lieu of the original. This rule relates to the first unwarned statement tainting the second warned voluntary statement under the miranda rule that questions the legitimacy of the original statement and Rule 103 Ruling on evidence offer of proof. In case the ruling is one excluding evidence, the substance of the evidence and specific evidentiary basis supporting admission were made know to the court by offer or were apparent from the content. This goes to what the State said in pre-trial matters.

Mr. DeBusk: The statements that Mr. Murreddu is worried about will not be coming in. We're not going to bring in any of the statements made by the

defendants to law enforcement. Tr.p. 10, lines 16-19

Mr. DeBusk: But we're not bringing in any custodial or even pre-custodial statements to police officers. Tr.p.10, lines 22-24

The Court: All right, Sir. Tr.p.10, line 25

Mr. DeBusk: And we have so instructed our witnesses, your Honor. Tr.p.11, lines 3-4.

These testimony further confirm Rule 103. Aside from the fact that counsel should have objected to the tainted testimony that was made when the witness was of this case to say and in that moment when the suspect was questioned as though is where the poisonous fruit come from and before admission counsel should have revisited that point in the testimony.

And requested a evidentiary hearing arguing during the criminal procedure of the custodial interrogation cannot be over looked or the taint removed from the illegal interrogation as explained in the fruit of the poisonous tree doctrine which is definite and absolute in its definition "the rule that evidence derived from an illegal search, arrest, or "interrogation" is admissibility because the evidence (the fruit) was tainted by the illegality, (the poisonous tree). So just because the suspect became a state witness after the fact that her original statement was tainted during procedure there's nowhere in the law that says that the statement that derived from the poisonous tree is no longer poisonous fruit by any means other than miranda exceptions which Ms. Cowan's statements didn't come in under an exception or meet the standard. So yes, counsel should have objected to Ms. Cowan's pre-miranda illegally obtained statements.

Derivative evidence: Evidence that is discovered as a result of illegally obtained evidence and is therefore inadmissible because of the primary taint. The statement "derived from" goes to the point and moment the violation took place and that taint follows that portion that has been poisoned the only cure is remove the poison by excluding it. The classification of Ms. Cowan does not determine whether her testimony derived from the poisonous tree and does her classification remove the taint from poisonous fruit there's nowhere in law that says it does especially when it absolutely addresses what I claimed from the start.

This letter along with maybe two others will be notarized. I've done some homework on how to argue these three issues concerning the fact you have very little time to consider my case prior to appeal. I've done some of the ground

work and raised some point that I need you to argue event if you use my argument to the tee. I believe in the fact that South Carolina Supreme Court rule on the fact of law when making there conclusion that they will hear my point of Law and rule in my favor addressing in this letter:

Allegation #6: Failure to object to testimony of Shakerra Cowan. My second letter will be notarized and last, I'm writing for the PCR transcript you said you would have your secretary mail. It's been a week so far which I need which I will address my last issue once I get my PCR transcript. Thank you very much.

RECEIVED
OCT 16 2018
S.C. SUPREME COURT

STATE OF South Carolina

In The Supreme Court

①

Certiorari to Horry County

Honorable William H. Seats (Circuit Court Judge

Keiron K. Coleman

Petitioner

v.

STATE OF South Carolina

Respondent

APPELLATE Case No 2018-000088

Petition for Writ of Certiorari

RECEIVED
OCT 16 2018
S.C. SUPREME COURT

Issue Presented

②

Whether petitioner's conviction should be reversed because trial counsel failed to request lesser included offense of Burglary, Second degree.

STATEMENT

On May 30, 2013, an Henry County grand jury indicted Petitioner for First-degree burglary App 590. On March 12, 2014, Petitioner was tried before the Honorable Larry B. Hyman jr and a jury. App 1 George DeBusk, jr and Nancy R. Livesay represented the state. App 2 J. M. Long, III represented petitioner. App 2 The jury convicted petitioner App 437 1.1-441, 1, 18. Judge Hyman sentenced petitioner to twenty-five years imprisonment. App 448, 1.11-449, 1. 5. The Court of Appeals affirmed petitioner's conviction State v Coleman op No 2015-up-386 (S.C. Ct. App. July 29, 2015) On October, 20 2015, petitioner filed a PCR application App 453. On September 18, 2017, the Honorable William H. Seats held a hearing App 514 Daniel A Selwa Et represented Petitioner App 514 Johnny Ellis James, jr represented the state App 514 On December 6, 2017 Judge Seats denied petitioners application, App 568 This petition follows.

Standard of REVIEW

(3)

The standard of review in PCR cases depends on the specific issue before the court. A PCR court's finding of fact will be upheld if there is evidence in the record to support them. Sellner 416 S.C. 606, 610, 787 SE2d 525, 527 (2016) Citing Jordan v State 406 S.C. 443, 448, 752 SE2d 538, 540 (2013) Questions of Law are reviewed de novo, with no deference to trial courts.

ARGUMENT

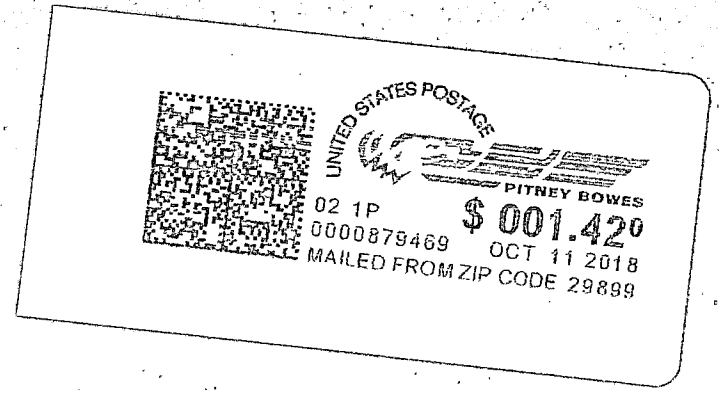
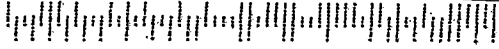
Petitioner's conviction should be reversed because trial counsel failed to request lesser-included offense of burglary second degree. Counsel's decision came from the court decision which counsel was swayed by the court's advice App 344-22-25 - App 345-1. Counsel would agree to the advice of the court, App 345-2-10. Counsel decided to go with the court's charge, App 345-11-22. Which was all or nothing on first degree burglary. Then counsel said it was me who wanted to go all or nothing. First I want you to listen to what counsel said "After speaking with my client, he says he agrees that possibly if there's convictions been introduced into evidence, there is no reason to request second degree, so we prefer the all or nothing on first. App 346-21-25"

Counsel says he agrees this is to say I took Counsel's advice which he took the advice from the Court and prosecution. And (4) At the PCR hearing Counsel said "I always request, every time I can, lesser included based on that because of the fact he's being punished, in my opinion, by the jury once the jury hears he has two prior burglary convictions. That's why I normally make the request for lesser included App 525-16-20. But when you read this issue as a whole it was the court and prosecution who had an influence on Counsel requesting all or nothing which would leave me no options. Counsel admitted that he took a gamble with the all or nothing App 526-11-18. Then he would place the blame on me "But Mr Coleman's decision was and it's not my decision. App 527-14-20. But it was first I agreed with him" then "we" wished to go all or nothing. App 526-6. To it was Mr Coleman's idea based on the advice of counsel. The Court Erred at PCR in not finding Counsel neither deficient performance nor prejudice. The PCR court said the trial transcript and Counsel's testimony show the choice to proceed without further demand for an instruction as to burglary, second degree was clearly applicants decision. App 577. For all the reasons Mrs Selwa II stated Counsel should have requested the lesser included offense but he betrayed Counsel once more. Counsel had a chance for a mistrial and decided on not doing that. As well if the court had the time to really review my trial transcript and from their own view see all the errors and issues that existed in my trial you would have no other choice but vacate this charge.

Thank you from the Coleman Family

Respect to the victims family

RECEIVED
OCT 16 2019
S.C. SUPREME COURT



THE SUPREME COURT OF SOUTH CAROLINA

DANIEL E. SHEAROUSE, CLERK OF COURT

Post Office Box 11330

COLUMBIA, S. C. 29211