

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Honorable William H. Seals, Circuit Court Judge

KEIRON K. COLEMAN

PETITIONER

v.

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OCT 23 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO 2018-000088

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

STANDARD OF REVIEW

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 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.

ISSUE PRESENTED

Whether petitioner's Conviction Should be reversed because trial counsel failed to object to testimony in violation of "Miranda" Constitutes ineffective assistance of Counsel under the Sixth Amendment

STATEMENT

On May 30, 2013, an Henry County grand jury indicted petitioner, was tried before the Honorable Larry B. Hyman Jr and a jury App 1 George DeBuse 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 STATEV Coleman. Op NO 2015-UP-386 (S.C. Ct. App) July 29, 2015) 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.

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ARGUMENT

Petitioner's Conviction should be reversed because trial Counsel failed to Object to testimony of Shakerria Cowan pursuant to the fruit-of-the-poisonous-tree doctrine, and *Miranda v. Arizona* 384 U.S. 436 (1966) There is direct evidence on the record that show that ms Shakerria Cowan initial testimony used at trial had not been mirandized on her first interview during our Custodial interrogation which can be seen and heard on states exhibit number 15 Police Dash Cam video. Counsel had access to the video prior to trial and during pretrial matters failed to Object to ms Cowan's testimony even after the state during pre trial matters decided to have the defendants during the custodial interrogation statements stricken from trial "App[#]9-17-25-10-1-25-11-14

Counsel could have requested *A Jackson v Denno* 378 US 368, 84 S. Ct. 1774 (1964). There is also evidence that show prior to ms Cowan's voluntary statement which is a repeat of three statements she made that day one to officer Rick Gibbott App 301-4-17. "pretty much told him" Mr Gibbott what happened without going into full details. App 301-13-14. This is the first statement App 301-7-14.

"Okay, so did you tell what had happened while you were on the road out there? App 301-15-16. "Not at first. App 301-17. The second time would be with officer Natalie Boyd." what did you do next as part of your assistance in the investigation, App 247-18-19. "I spoke to the driver of the vehicle. App 247-17.

App 249-11-17. This is the police voluntary statement
And while you were out there investigating on the side of the
road, did you take a voluntary statement from anybody. App 255-
14-16. "I stood by while the driver wrote a voluntary statement.
App 255-17-18. "Okay and who tell the jury, please, who the
driver of the car was. App 255-19-20. "The driver was the female
Shakewa Cowan. App 255-21. The final statement was given to lead
investigator Det Scott Bogart. "Also had interviews that were quite
Cruel from one of the. App 263-10-11. "All right did you interview ms
Cowan? App 271-7. "Yes I did. App 271-8. "And some of the facts
brought to you would have been based on conversations with ms Cowan
is that correct? App 272-24-25-273-1. "Yes. App 273-2. Counsel
Failed to request a voluntariness hearing concerning ms Cowan's
statements but this is evidence Counsel failed to put to the adversar-
test knowing her statements were illegally obtained and derived from
the poisonous tree dose becoming states witness remove the initial
taint of the unwarned interrogation under miranda rule miranda
says even if the second time is voluntary the taint of the first
unwarned miranda dose not remove the taint of being inadmissible
while she was still a defendant in the case. This is what Counsel
Failed to argue which allowed the jury to hear unchallenged tainted
testimony by states star witness is prejudicial in its self this
is a basic procedure Counsel should have argued. There cant be
any sound reasoning to why Counsel did not other then it
being deliberate.

The PCR court erred in its finding of facts and conclusion of law when Allegation #6 - Failure to object to testimony of Shakerra Cozem. Went unchallenged at PCR by Counsel or during his examination did he respond to the claim at all on direct or cross examination Counsel objecting to the voluntariness of her testimony goes into miranda Counsel gave no reason for his failure to the claim or did he dispute or refute the claim at a PCR hearing is the purpose of making an allegation when Counsel does not defend against the allegation submitted how is the court to render the decision in favor to the state when the state did not contest "To deny an adverse claim or assert a defense to it in a court proceeding. The PCR court erred in holding petitioner could not prove deficient performance and prejudice under Strickland and this court should reverse.

Thank you from Col. Brinkley

Respect to the victim family