

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT
Court of Common Pleas
Post Conviction Relief

Michael G. Nettles, Circuit Court Judge

Case No.: 2017-002269

Deonte Brown #361477,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CASES

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QUESTION PRESENTED

That Counsel was ineffective for his failure to interview Chavis Heyward and properly prepare for his testimony.

That Counsel was ineffective for his failure to object to the use of Dario Teran's and his statement being read into the record by the Solicitor.

That Counsel was ineffective for his failure to show the prejudice and bias of the criminal investigator, where a potential suspect's Mother was having a relationship with a lead detective of the case, Detective Lawrence.

That Counsel was ineffective for his failure to object to SLED video enhancement.

That Counsel was ineffective for his failure to adequately advise the Petitioner regarding taking the stand and testifying.

STATEMENT OF THE CASE

The 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 February 2013 term of the Charleston County Grand Jury for murder, attempted murder, and possession of a firearm during the commission of a violent crime (2013-GS-10-00535, 00536, 00537). James W. Smiley, Esquire, represented him. Petitioner proceeded to a jury trial and was found guilty as indicted. The Honorable Roger M. Young, Sr., sentenced Petitioner to incarceration for fifty years for Murder, thirty years for Attempted Murder, and five years for Possession of a Firearm During the Commission of a Violent Crime, each sentence to be served concurrently. Petitioner did not appeal his conviction or sentence.

STANDARD OF REVIEW

In a post-conviction relief action, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Petitioner

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the Petitioner must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

STATEMENT OF FACTS

This matter came before the Lower Court by way of a post-conviction relief (PCR) application filed on July 15, 2015. Respondent submitted a Return on February 18, 2016. An evidentiary hearing was convened on August 3, 2017, at the Charleston County Courthouse. Petitioner was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Petitioner testified on his own behalf at the evidentiary hearing. Petitioner's mother, Doris Gregory, and Petitioner's trial counsel, James W. Smiley, Esquire ("Trial Counsel") also testified. Accordingly, the Lower Court granted Petitioner a belated review.

In his current application, Petitioner alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. "He never did investigate my case to the best of his ability;"
 - b. "My attorney never had a pre-trial hearing for my case;"
 - c. "My lawyer did not file for the notice of appeal;"
2. "Actual Conflict of Interest:"
 - a. ". . .Detective Lawrence who was investigating the case was in a sexual relationship with my co-defendant(sic) mother who was a possible suspect under investigation of this crime;"

On July 25, 2017, Petitioner amended his application to include the following allegations of ineffective assistance of counsel regarding:

- a. Facts surrounding the original arrest of attempted murder and then enhanced to murder.
- b. Failure to adequately question Det. Christina Smith's testimony that she was able to ID client behind the muzzle flash.
- c. Video enhancement by SLED.
- d. Sequence of shooting.
- e. Failure to adequately present the possibility of two shooters.
- f. Failure to adequately present the issue of two people present with red shirts.
- g. Failure to adequately question regarding Gun Powder Residue test.
- h. Failure to properly investigate:
 - i. Defendant said the shooter was Derrick Brown. Derrick Brown was not arrested or charged. Derrick Brown's Mother was in a relationship with Detective Charles Lawrence.
 - ii. Witness Chavis Heyward originally said that he did not see anything. Two years later he testifies and identifies people on the video.

- iii. The waitress at the restaurant gave a statement that she did not see anything. However, at trial she remembers seeing a gun come out of a red sleeve.
- i. Failure to talk to witnesses before trial. No analysis of the videos and no Private Investigator.
- j. Failure to have a suppression hearing regarding the videos.
- k. Failure to bring up the information regarding Detective Charles Lawrence and his relationship with Derrick Brown's Mother.
- l. The Petitioner did not testify based on bad advice from Defense Counsel.
- m. Defense Counsel had no theory of Defense.
- n. There was a ten (10) year plea offer, which was not properly explained to the Petitioner.
- o. Defense Counsel did not get closing argument because he put in a picture of shattered window as evidence.
- p. Defense attorney did not file an Appeal, after he told Petitioner that he would.

Petitioner also alleged that the theory of transferred intent was improperly applied.

The Petitioner testified that on July 15, 2012 he went out to a night club called Frasier's in Charleston County and after that went to the Waffle House for breakfast. This was around 4:00 a.m. There were a number of people present at the Waffle House and he was there with a group of people. In the Waffle House, there was an altercation between the Petitioner and another individual. There was a shot fired from outside in the parking lot. At this time he was coming out of the door. Everyone started running and that is when a second shot took place. (App. p. 593, lines 5-24)

Petitioner was notified that he was wanted for Attempted Murder and he turned himself into the County Jail. He was transferred to Police headquarters where Detective Lawrence and Detective Smith read him his Maranda Rights. He gave a written statement. (App. p. 594, lines 13-19) In his statement indicated that he was innocent of this crime. (App. p. 595, lines 2-4)

The Petitioner testified that two individuals were shot. Mr. Dontaye Reed, a friend of his, was killed at the scene. Quinten Allen was also shot and survived. Petitioner hired Mr. Jim Smiley to represent him. He met with Mr. Smiley a number of times and they talked about his innocence. It was his understanding that the theory of defense was going to be that he would testify and that Mr. Smiley was going to show how a second possible suspect was involved in this case. This individual, Derrick Brown, was the actual shooter. Mr. Brown's Mother was in a sexual relationship with Detective Lawrence who was investigating the case. (App. p. 597, lines 6-24) Petitioner testified that he gave this information to trial counsel, but he did not believe that he investigated this matter.

Petitioner was initially charged with Attempted Murder. (App. p. 599, lines 24-25) This was later upgraded to a charge of Murder. The Petitioner testified that he believed that Counsel was ineffective for his failure to have a Pre-Trial suppression hearing. It was the Petitioner's understanding that the State's case revolved around the State being able to identify him in a photo that showed a muzzle flash. The State was saying that they could identify him behind the muzzle flash and that he was wearing a red shirt. (App. p. 604, lines 9-17)

Petitioner testified that he was concerned about the testimony of a number of witnesses. That one of the witnesses, Chavis Heyward, was questioned in 2012. Trial Counsel told Petitioner that Mr. Heyward did not indicate anything about who had a weapon or what clothing they had on. (App. p. 605, lines 14-19) In addition, Petitioner was concerned about Chavis Heyward and his interaction with Investigator Barfield. Investigator Barfield was allowed to testify regarding his conversation with Chavis Heyward. Chavis Heyward testified at the trial that he had never told Investigator Barfield anything about who the shooter was or

what he was wearing. (App. p. 605, lines 2-4) Investigator Barfield testified that they spoke with Mr. Heyward inside the office with two other officers. Barfield never indicated anything about anyone having a weapon or seeing the shooter. However, on the way to the elevator, it was just Detective Barfield and Chavis Heyward. Barfield stated that he had a heart to heart conversation with Heyward and that is when Mr. Heyward came forward and said that the guy with the red shirt was the shooter. That this individual was the one with the weapon. (App. p. 607, lines 2-12) Petitioner testified that he felt this was extremely prejudicial because he was wearing a red shirt. This testimony identified the individual with the gun as an individual who had on a red shirt. The State was therefore able to link the shooting to the Petitioner.

The next witness was Dario Teran. Petitioner testified that Mr. Teran stated that he never saw who the shooter was or what he had one. That he only saw a flash. Mr. Teran had written two statements. One was at the scene when the incident took place and the other he wrote at police headquarters. In one of the statements, he stated that the shooter had on a red jersey. But when he was on the stand he said that he did not remember anything. That the only thing he remembered was the flash. (App. p. 610, lines 8-18)

Petitioner testified that Mr. Teran's testimony was refreshed with a statement that was written the night of the incident and with the one that he wrote the next day. The witness stated that due to a motorcycle accident few months after the incident, he did not remember seeing who the shooter was. He just saw a flash. Petitioner testified that Trial Counsel did not object to this refreshing of his testimony. The Court allowed his written statement to come in. (App. p. 611, lines 5-19) In fact, the statement was read by the Solicitor to the Jury. However, the written statement did not come into evidence. (App. p. 612, lines 1-7)

The next witness was April Blodgett. She was a waitress at the Waffle House at the time of the incident. Her testimony was that she saw a gun come out of a red sleeve. But that she did not see the face and she did not see who shot the weapon. (App. 613, lines 3-6) She had given a statement the night of the incident and she never indicated in her statement seeing anybody with a weapon. She made no written statement regarding who the shooter was or anything about the sleeve. (App. p. 613, lines 17-22) She was shown the statement to refresh her memory and after her memory was refreshed, she was allowed to read her statement on the stand. She testified that she saw the gun come out of a red sleeve. (App. p. 614, lines 3-13)

Jessie McNeil, who was a cook at the Waffle House, also testified. He testified that the bullet came through the window from the outside. That this happened while he was attempting to break up the altercation that occurred in the restaurant. (App. p. 616, lines 10-16)

Petitioner also testified that he was concerned about the way that SLED had enhanced the video from the scene. There were techniques that were used to zoom in and brighten the video. This was an attempt to identify the person behind the muzzle flash. (App. p. 618, lines 19-25) Petitioner testified that he thought that trial counsel was ineffective for not questioning the SLED expert about the first shot, because he believed that the first shot was the most important piece of evidence. Whoever fired the first shot, was the same person who was running across the parking lot and fired the second, and would be the person behind the muzzle flash. Petitioner further testified that had he questioned the witness about the first shot, it would have clearly proven his innocence, because it was a proven fact that on the video, you can see the muzzle flash with a body figure behind it. (App. p. 634, lines 5-19)

Detective Lawrence doesn't testify at trial, but he is mentioned in the transcript and pops up throughout the trial on at least six (6) different occasions. As the Petitioner stated earlier, he believes that the actual shooter in this matter was Derrick Brown. Detective Lawrence had a vested interest in not seeing Derrick Brown charged with this crime or even considered as a suspect. This is because Lawrence was having an affair with Derrick Brown's Mother. (App. pp. 622-623) Petitioner discussed this with trial counsel and he was told that he was going to "set this information on side bar" in case at any point in the trial it comes up, that he would be able to use it. However, nothing was ever done with this information. (App. p. 624, lines 12-19).

Defense Counsel James Smiley made a Motion for a Directed Verdict. The Court points out the circumstantial nature of the evidence. The Court, in its ruling on the Motion discusses four pieces of circumstantial evidence presented by the State:

"Well, I suppose one of the most remarkable things about this case is I've never had a case with this many different video cameras and angles of the incident that took place and there being no conclusive proof as to who the shooter was, along with this many people in close proximity of an actual shooting with no one being willing to identify who the shooter was.

So there is no direct evidence that the defendant was the shooter. It's all circumstantial evidence, and the circumstantial evidence standard is substantial circumstantial evidence, and here is what I have written down as the circumstantial evidence that the defendant was the shooter: First, that the defendant was wearing a red jersey and that he was being pushed out the door at the time that shots were fired.

Second: Chris Heyward told Investigator Barfield that the guy wearing the red shirt was the shooter. He denied that on direct and cross, but his statement came in under 613 (b). Not the strongest evidence in the world, but it is evidence.

Then Dario Teran, he said that the guy wearing the red shirt was the shooter. Now, that came in under 803, purported recollection, because he stated well, he couldn't really remember due to a motorcycle accident, which he suffered a head injury.

So that statement in, and that's what the statement said. He acknowledged on cross-examination that he may not have seen that, anything more than the flash, but, nevertheless, his statement did indicate that he said that at the time the guy wearing the red jersey was the shooter.

The next item, the fourth item, is April Blodgett, the waitress, said that she now remembers seeing the gun come out of a red sleeve. Didn't remember it at the time or didn't tell anybody at the time, but she remembers it now. That was her testimony.

Then there is the fact that there were a number of people in that foyer area, but it wasn't an unlimited number of people, and the defendant was the only one in that foyer area that I could tell who was wearing a red jersey, and he was present in the foyer area when the shots were fired.

That is a chain of circumstantial evidence. It's not the strongest circumstantial evidence case I've ever seen, but, in my opinion, it is enough to get you past the directed verdict at this time, so your Motions are denied."

This ruling by the Court lays out a brief and concise summary of the evidence that was presented by the State. It also highlights the areas of ineffective assistance of Trial Counsel.

ARGUMENT I

That Counsel was ineffective for his failure to interview Chavis Heyward and properly prepare for his testimony.

CHAVIS HEYWARD

Chavis Heyward's testimony at Trial was not in itself damaging. It was only after the testimony of Investigator Barfield, that information became available to the Jury that could link the Petitioner to the shooting. Trial Counsel, testified at the evidentiary hearing that in hindsight, he should have spoken to Chavis Heyward. He stated that he was unaware that Investigator Barfield was going to testify about his interview with Heyward, until right before the Trial. Trial Counsel stated that Investigator Barfield's testimony was a surprise. Counsel stated that had he spoken with Heyward before the trial, he would have been aware of the interview with Investigator Barfield and could have been more prepared for this information.

Heyward stated at trial that he did not see the Petitioner with a gun. He testified that he did not see who shot that night, or what that individual was wearing. (App. p. 194, lines 14-18)

Investigator Barfield's testimony (App. p. 192, lines 5-25) is extremely prejudicial in that it helps the Jury conclude that the shooter is an individual who was wearing a red shirt. Investigator Barfield stated that he had a conversation with Chavis Heyward when he came in to be interviewed. (App. p. 200, lines 14-21) Defense Counsel does make an objection to this coming in as hearsay. (App. p. 201, lines 1-2) However, the Court allows him to testify as to what Chavis Heyward told him. The court allows this under Rule 613 (b) (App. p. 201, line 4).

Defense Counsel testified that had he known and interviewed Heyward prior to trial, he would have known that this information was going to be brought out by the State and what he allegedly told Detective Barfield. The Petitioner would assert that Defense Counsel was ineffective for his failure to interview Chavis Heyward prior to trial and not obtaining this information and having knowledge of this prior to his testimony.

ARGUMENT II

That Counsel was ineffective for his failure to object to the use of Dario Teran's and his statement being read into the record by the Solicitor.

DARIO TERAN

Trial Counsel did not object to Dario Teran's statement being used and read into the record. He stated that he believed that it was an exception to the hearsay rule. (App. p. 571) Dario Teran has his memory refreshed to the point that the Solicitor actually reads a written

statement that he made after the incident before the Jury. Mr. Teran testified that his memory was blurry and that he had been involved in a motorcycle accident. The Court allows this statement in under Rule 803 and then goes further to allow the Solicitor to read Mr. Teran's written statement into the record. The Court does not allow the statement to actually come into evidence in its written form.

The damaging part of the Statement is that it allows information about the shooter with the red shirt to be heard by the Jury. The Petitioner would contend that Counsel was ineffective for his failure to object to this information. He consented to allow the evidence in under Rule 803, and consented to this document being read to the Jury.

Throughout the trial, the State uses the procedure of refreshing the witnesses memory with written statements that were given to the Police at the time of the incident or afterwards. The State has to resort to this procedure in an effort to elicit the testimony from the witnesses to benefit the prosecution. This pattern of refreshed memory becomes a keystone of the State's case.

ARGUMENT III

That Counsel was ineffective for his failure to show the prejudice and bias of the criminal investigator, where a potential suspect's Mother was having a relationship with a lead detective of the case, Detective Lawrence.

DETECTIVE LAWRENCE

At the Post-Conviction Relief trial, information comes out that one of the detectives, Detective Lawrence, had a relationship with Derrick Brown's Mother. Derrick Brown was a potential suspect in the shooting at the Waffle House. The Petitioner would argue that

Detective Lawrence had a bias in this case to show that the shooter was someone other than Derrick Brown. Derrick Brown being the son of the woman in which he was having an affair. While Detective Lawrence does not testify at Trial, he is mentioned six (6) times in the transcript. (App. p 16, line 21; p. 52, line 17, p. 53, line 6, p. 225, line 4, p. 367, line 14 and p. 367, line 21)

The Petitioner testified that he was friends with Derrick Brown and his family. That he had personal knowledge that Derrick Brown's Mother was having an affair with Detective Lawrence. He stated that their relationship was common knowledge. He also testified that Detective Lawrence was later fired for refusing to charge Derrick Brown with another crime because of the relationship that he had with Mr. Brown's Mother. The Petitioner testified that he brought this to the attention of Trial Counsel.

Mrs. Doris Gregory, the Petitioner's Mother testified that she is best friends with Derrick Brown's Mother. That she had personal knowledge that Derrick Brown's mother was dating Detective Lawrence. She went further to testify that she thought that Derrick Brown was the shooter in this incident.

Trial Counsel stated that it was undisputed that Detective Lawrence was having an affair with Derrick Brown's Mother. He stated that he caused another case to be dismissed and he was later fired because of this incident. He further stated that Detective Lawrence actually had the Petitioner transported to his office for an interview without telling trial counsel, while he was representing him. He stated that this caused him concern and he complained once he

found out about this incident. Any statement that was given from that interview was not used in trial.

Trial Counsel stated that he did not know of any way to use this information in trial. That he did not know a proper, appropriate or admissible way to introduce any of this information. The Petitioner stated that he wanted Trial Counsel to use the information regarding Detective Lawrence at trial. That he thought that Trial Counsel was going to use this information and was surprised that this information was never brought out.

The issue of Detective Lawrence's affair raises several issues:

1. That Counsel should have used this information to show bias in the investigation of the case; and
2. It was also key factor in showing the possibility of third party guilt, which was not brought to the Jury's attention.

Generally, Rule 608 SCRE allows evidence of character, conduct and bias of a witness. Section 608 (c) states that evidence of bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

The Petitioner would argue that under these circumstances he was entitled to show bias even though it was not to impeach any particular witness. Detective Lawrence skillfully does not take the stand in this case. However, he is mentioned a number of times throughout the trial and had an active role in the preparation of this case. Detective Lawrence had a reason why he did not want any information coming out about Derrick Brown. There is evidence in

the case that there were two different individuals wearing red shirts and evidence that Derrick Brown was present at the scene. The possibility of another suspect opens the door to the issue of third party guilt that the other individual with a red shirt could have been Derrick Brown.

The admissibility of evidence of Third party guilt is governed by the case of State v. Gregory 198 S.C. 98, 6 SE 2d 532 (1941). Gregory states that the evidence offered by the accused as to the commission of a crime by another person must be limited by such facts as are inconsistent with his own guilt and as such the facts raise a reasonable inference of presumption as to his own innocence. Evidence which can have no other affect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another is not admissible. However, this was never pursued.

In this case, you have bias by Detective Lawrence and information that another could have committed this crime. This is more than a bare suspicion. The evidence offered by the Petitioner in this case, as to the commission of the crime by another person raises a reasonable inference or presumption as to his own innocence. This case is unique in that you have elements of third party guilty as well as potential bias in the investigation. These two factors combined clearly demonstrate the potential for bias in this case, as well as meeting the standard of third party guilt. This becomes even more evident after the fact in that Detective Lawrence was later dismissed as a result of like misconduct.

ARGUMENT IV

That Counsel was ineffective for his failure to object to SLED video enhancement.

Joseph West testified at trial that he was a Senior Agent with the South Carolina Law Enforcement Division and his program of assignment is the tech services unit that processes and handles video, audio, and electronic surveillance. (App. p. 222, lines 10-14) When asked whether or not he enhanced videos, he stated that in July, 2012, he was brought a video of the case in question (App. p. 225, lines 1-4) Interestingly, this video was brought to him by Detective Lawrence. (App. p. 225, line 4) He was shown a disc that was marked as State's Exhibit 25. He indicated that this is the disc that he worked on back on July, 2012 and that this disc was created with the enhanced pictures. (App. p. 225, lines 1-17) The State, at this point, moved to introduce the exhibit into evidence and this was without objection. (App. p. 225, lines 18-20) Mr. West testifies that he worked on the exterior camera angles (App. p. 226, lines 4-5) that he worked on the brightness of the exterior camera angle (App. p. 226, lines 7-9) and that he had a separate recording slowing down the exterior angles (App. p. 226, lines 10-11) Mr. West further testifies that he slowed the video down 35% (App. p. 226, lines 19-20) and also states again that he changed the brightness. (App. p. 226, lines 22) This was all without objection of trial counsel. It is interesting to note that the Warrant for murder was not drafted until after the SLED enhanced version of the video was provided to the Sheriff's Office. (App. p. 361, lines 1-4) Christina Moyer Smith testified that "we were able to identify folks in the video and basically identify people who are on the exterior once it was slowed down, and that the enhancement added in the investigation. (App. 362 lines 14-21) Therefore, not only did the Trial Counsel fail to object to the enhanced video, but it was this enhanced video was also used in initiating the arrest warrant for Murder against the Petitioner. Trial Counsel testified at Post Conviction that the State was trying to prove that the person

behind the flash that was in the video was Deonte Brown and it was presented to the Jury in that fashion. (App. p. 692, lines 1-4) and therefore guilty of this crime.

ARGUMENT V

That Counsel was ineffective for his failure to adequately advise the Petitioner regarding taking the stand and testifying.

PETITIONER'S DECISION NOT TO TAKE THE STAND

The Petitioner also testified that he thought that Trial Counsel was ineffective in his advice regarding the Petitioner taking the stand and testifying. He stated that he had a discussion with counsel. He believed that the strategy was that if he did not testify they would have the last argument before the Jury.

This goes hand in hand with the allegation that Counsel was ineffective for failure to get the last closing argument at Trial. Defense Counsel presented testimony from SLED forensic scientist Wendy Berry an expert on gunshot residue analysis. (App. p. 384-389) Ms. Berry testified that a firearm fired at a close distance would leave gunshot residue on the hands and the clothing of the shooter. Ms. Berry stated that she tested Petitioner's clothing in this case and did not find any gunshot residue. (App. p. 396)

Trial Counsel also admitted a photograph of the shattered glass in the Waffle House. (App. p. 108) Trial Counsel used this photograph to cross-examine and question the State's witness, Aaron Myer. Trial Counsel testified that he used evidence to show that Petitioner was not the shooter because lack of gunshot residue on his clothing and he wanted to show that the angle of the shot through the glass indicated that it came from outside of the restaurant.

However, the Petitioner testified that part of his decision not to testify was based on Counsel's reassurance that if he did not testify that they would get the last argument. It was Trial Counsel's ineffective assistance of counsel which led to Petitioner not testifying and not receiving the last argument at trial.

When asked about his decision not to testify, the Petitioner stated:

A. "Well, from my understanding, we meet a couple times before the trial, and he was going to let me testify on my behalf. What actually took place – because there's a lot of things that people didn't talk about – you know, because they wasn't there, so it's, like, speculation, so by me testifying to certain things, it was considered as evidence because I was there and I know exactly what happened. I could point it out on the camera.

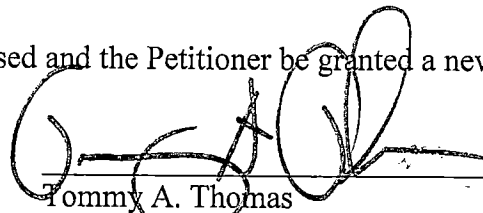
Q. Why didn't you testify?

A. Well, I didn't testify because counsel advised me not to."

Clearly the Petitioner wanted to testify and in testifying could have clarified any unresolved issues.

CONCLUSION

That the Lower Court's decision be reversed and the Petitioner be granted a new trial.



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