

In the Supreme Court
State of South Carolina

Deandre Tyshun Foster
Petitioner

v.

State of South Carolina
Respondent

RECEIVED

MAR 22 2019

S.C. SUPREME COURT

Memorandum
for
Writ of Certiorari

Petitioner asserts that his plea was involuntary and presents this Motion in Support of petitioner's claims:

In the very beginning petitioner informed Trial Counsel that he was not the Shooter and after assaultant Pled the Scene petitioner remained because he was not the Shooter. At PCR Plea counsel stated he did not do any independent investigation App. 43, L13-H4, 1.13. Petitioner argues in *Wiggins v. Smith*, 539 U.S. 510 the Courts ruled that the principle that to provide effective assistance of counsel an attorney must conduct a reasonable investigation into "all reasonably available mitigation evidence and reasonably available evidence tending to rebut any aggravating evidence introduced by the state." applies equally in the non-death penalty context. *Wiggins Supra*, *McKnight* (46, 661 S.E.2d at 360). Had trial Counsel did any form of Investigation ~~He~~ would of found that petitioner had alibi witness who could of Substantiated (1) That petitioner had a witness who would of testified that petitioner had fired a gun previously that day with family members (2) that witnesses would of testified that the weapons was thrown from the driver Window while petitioner was only the Passenger.

Petitioner asserts that Trial Counsel Failed to investigate, there was Statements from the Victim that She knew who the Shooter was and didn't identify petitioner. Had Counsel did any pre-trial investigation he would of Discovered 1) That a Supplement report by Investigator Woodward T. clearly stating the victim did not sustain Gunshot wounds only a Graze; 2) That the police initial Report Say they Seen the Guns being tossed from the driver Window and found bullet casings in the pocket of the driver; 3) That petitioner had a eye-witness who could account for the Gun residue being present on Petitioner's hand; 4) That Victims statement said she knew the Shooter and never identified petitioner; 5) That petitioner Didn't run because he was innocent, he didn't flee the Scene; 6) And upon Police Investigation no evidence was found on the passenger Side of Shots being fired, No Shell Casings etc..

Petitioner argues had Trial Counsel properly investigated the case he would of went to trial. Petitioner argues he was forced to plea because Counsel wasn't prepared for trial because failed to do any pre-trial investigation to establish the prejudice prong of the Strickland test. a petitioner who pled guilty must Show there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty & would of insisted on going to trial (Hill v. Lockhart 474 U.S. 52, 59) Petitioner Has met this Standard, Had Counsel prepared for trial effectively Petitioner would have went to trial and not pled guilty.

Petitioner case is identical to "Lounds" In petitioner case trial attorney failed to call witnesses that would have testified in support of Petitioner own testimony. In "Lounds" the Supreme Court held, that trial Counsel had a duty to, "at a minimum... interview potential witnesses." (Lounds v State 380 S.C. 484, 670 S.E.2d 646) quoting And v. Catoe, 372 S.C. 318, 321, 642 S.E.2d 390, 397)

Petitioner argues he has met the prongs set forth in Strickland; and Hill v. Leckhoff and he did not voluntarily plea, and he pled only because Counsel failed to do any pretrial investigation thus the guilty plea was involuntarily made and should be vacated.

Mar 16, 2019

5/ Deandre T. Foster
Deandre T. Foster
B.R.C.I 4460 Broad River Rd
Cola. S.C. 29221

STATEMENT OF: Savannah Thompson AGE: 18 DATE: 04/01/2016

ADDRESS: Boiling Springs Sc.

PHONE # DOB: SSN:

My dad let two of my friends move in with me, Brittany Fowler and Shyame Thompson. Things went working out so my dad told them to leave and they blamed me for it. They told me they were coming after me and kept asking me where I was. Also, Brittany Fowler's boyfriend is Douglas Jones, which is who I think shot me. I know that they were staying with Douglas, Ryan, and Ty the past two days. I was in the car in the passenger seat. I heard bullets hit the car and felt one hit my head. (S)

I have read this statement consisting of 1 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 0230 A M. on the 1st day of April 2016.

WITNESS: [Signature]

[Signature] Signature of person giving voluntary statement

SWORN to before me this _____ day of _____, 20__.

(Seal) Notary Public of South Carolina My Commission expires: _____

CASE# 16040203	VOLUNTARY STATEMENT		PAGE 1 of 1
STATEMENT OF: Brittany Fowler	AGE:	DATE: 4-13-16	
ADDRESS:			
PHONE #	DOB:	SSN:	

I called Doug ^{BF} while I was at work because they waited outside for two hours I had no idea he was bringing people but knew he would bring his gun. I told him they were trying to set us up Aaron tried getting us all there and I told him it was on upstate road by USC upstate. ^{BF}

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement. This statement was completed at BSS P M. on the 1st day of April 2016.

WITNESS: [Signature] Brittany Fowler
 Signature of person giving voluntary statement

SWORN to before me this _____ day of _____, 20__.

 Notary Public of South Carolina
 My Commission expires: _____

**Supplement Byrd J M**

ON 04/01/2016 AT APPROXIMATELY 0015, IN COUNTY OF SPARTANBURG, I WAS SITTING AT THE INTERSECTION OF VALLEY FALLS RD. AND LONE OAK RD WHEN I HEARD THE SOUND OF AUTOMATIC GUNFIRE COMING FROM THE AREA OF VALLEY FALLS RD AND ASHEVILLE HWY. AS I LOOKED DOWN THE ROADWAY IN THAT DIRECTION I OBSERVED A SMALL SEDAN COMING DOWN VALLEY FALLS RD AT A HIGH RATE OF SPEED. I PULLED OUT BEHIND THE VEHICLE, 2003 NISSAN ALTIMA (SC TAG: MAL 269/ VIN: 1N4AL1DX3C238384) AND INITIATED A TRAFFIC STOP, BLUE LIGHTS AND SIREN.

THE VEHICLE TURNED RIGHT ONTO I-585 AND ACCELERATED AT WHICH TIME I BELIEVED THE VEHICLE WAS ATTEMPTING TO EVADE ME. I ADVISED DISPATCH THAT I WAS IN PURSUIT OF THE VEHICLE AND THAT WE WERE GETTING ONTO BUSINESS 85 SOUTHBOUND AND THEN THE VEHICLE TOOK THE EXIT RAMP TOWARDS HEARON CIRCLE. SUSPECT VEHICLE THEN TURNED RIGHT ONTO HEARON CIRCLE AND THEN EXITED ONTO LONE OAK RD. I THEN ADVISED CPL. PRICE, OF MY SPEED, WEATHER, ROAD AND TRAFFIC CONDITIONS. WE CONTINUED ON LONE OAK RD CROSSING ONTO EAST CAMPUS BOULEVARD AND THE VEHICLE LOST CONTROL AND CONTINUED IN THE OPPOSITE LANES OF TRAFFIC (NO TRAFFIC). AS THE VEHICLE CONTINUED DOWN EAST CAMPUS BOULEVARD I OBSERVED A FIREARM BEING THROWN FROM THE DRIVER SIDE OF THE VEHICLE AND LAND OFF THE ROADWAY. WE THEN TURNED ONTO NORTH CAMPUS BOULEVARD TOWARDS MILLIKEN RD. SUSPECT VEHICLE CROSSED BUSINESS 85 AND TURNED RIGHT ONTO MILLIKEN RD. VEHICLE CONTINUED DOWN MILLIKEN RD AND TURNED RIGHT ONTO CALIFORNIA AVE. WE CONTINUED DOWN CALIFORNIA AVE AND TURNED LEFT ONTO ASHEVILLE HWY, TURNED RIGHT ONTO SOUTH CLEVELAND PARK DRIVE, TURNED LEFT ONTO FULTON AVE, CROSSED FREEMONT AVE, CONTINUED ON FULTON AVE, AND CROSSED OVER ADEN ST. SUSPECT VEHICLE CONTINUED INTO VICTORIA GARDENS APARTMENT COMPLEX WHERE THE VEHICLE STOPPED AND THE BACK SEAT PASSENGER JUMPED OUT OF THE VEHICLE AND RAN ON FOOT. I EXITED THE VEHICLE, DREW MY SERVICE WEAPON AND POINTED IT AT THE VEHICLE. I THEN ORDERED THE DRIVER TO LET ME SEE HIS HANDS, IN WHICH HE DID. I THEN ORDERED THE DRIVER (DOUGLAS JONES, ST. B/M) TO EXIT THE VEHICLE AND LIE ON THE GROUND. A SC HIGHWAY TROOPER AND MYSELF APPROACHED THE DRIVER AND PLACED HIM IN HANDCUFFS. OTHER UNITS PULLED THE FRONT SEAT PASSENGER, DEANDRE FOSTER (S2) OUT OF THE VEHICLE AND SECURED HIM. THE REAR SEAT PASSENGER WAS LATER APPREHENDED BY OTHER UNITS.

I THEN SEARCHED THE DRIVER, MR. JONES, AND DURING THE SEARCH I LOCATED AN AR-15 ROUND IN HIS FRONT LEFT POCKET, ALONG WITH AN AMOUNT OF CASH. HE WAS THEN SUBSEQUENTLY PLACED IN MY PATROL VEHICLE. A SEARCH OF THE SUSPECT VEHICLE IN THE DRIVER SIDE FLOOR BOARD WAS AN EXTENDED MAGAZINE (40 CALIBER), CENTER CONSOLE WAS A LOADED AR-15 MAGAZINE (BLACK IN COLOR), AND IN THE PASSENGER FLOOR BOARD WAS A LOADED SILVER MAGAZINE AND TWO SMALL BAGGIES OF GREEN PLANT MATERIAL. ALL ITEMS WERE SEIZED,

I WAS THEN NOTIFIED BY COMMUNICATIONS AND UNIFORM PATROL THAT THERE WAS A REPORTED DRIVE-BY SHOOTING IN THE AREA OF ASHEVILLE HWY AND HEARON CIRCLE. INVESTIGATIONS WAS NOTIFIED AND ALL SUSPECTS WERE THEN TRANSPORTED TO THE SHERIFFS OFFICE FOR FURTHER INVESTIGATION. ALL OCCUPANTS OF THE VEHICLE WERE ISSUED NUMEROUS CITATIONS.

Supplement Macdonald J

On 04/01/2016 I was advised that Deputy Byrd was chasing a vehicle that had been firing a gun from inside the car. I listened to the chase and heard Deputy Byrd advise that the suspects had thrown items out of the car on North Campus Blvd. Once I determined that the pursuit was going in the opposite direction I was at, I responded to North Campus Blvd in an attempt to locate the thrown items. At 00:30, I arrived with State Troopers near what my GPS says would be 315 North Campus Blvd. In the roadway, I observed a black AR-15 style rifle, black mesh type bag and a fore grip for the rifle that was broken. Cpl. Thompson advised me that two other Troopers had run over the gun during the pursuit and he was standing by for the Sheriff's Office. I initially called for ID Deputy Horton (I-54) to come collect the evidence. While waiting for him to respond, it began to rain heavily. Due to the heavy rain, I went and photographed the items in the position they were in. I then checked the rifle to make sure it was clear and safe. I observed the weapon to be in the "fire" mode. I put the weapon on safe, removed the magazine (which contained 8 unspent .223 rounds) and then cleared the chamber (one round of .223 ammunition was ejected from the chamber.) All items were then placed in my patrol car and transported to the Sheriff's Office and placed into evidence.

Supplement Woodward T

On 04-01-16 I responded to SRMC in reference to a possible victim of a gun shot wound from an incident that occurred around Hearon Circle and Asheville Hwy.

Upon arrival the victim (Savanna Thompson) was in trauma bay 1 being checked by emergency room staff. After several minutes the victim was taken to x-ray to be further examined and I spoke with ER personnel who stated that she did not have a gun shot wound but did have a laceration on the left side of her head close to her ear.

Once Ms. Thompson was moved to a room I asked what happened. She stated that she had been picked up and was going on a date with a guy she knew from work. She states that shortly thereafter she heard gun shots and thought she hit her head and was unsure of exactly what happened and felt blood on the left side of her head. When I asked where it occurred she stated that she wasn't good with directions and was unsure. I then asked who or why someone would be shooting at her or the individual she was with and she stated that she didn't know.

Several minutes later Ms. Thompson stated that her father had allowed 2 girls to move in with them but had recently found out that one of them was possibly dating a gang member and kicked both of them out. She states that sometime today one of the 2 girls, a Cheyanne Thompson W/F, had called her and told her " just so you know we're after you." She states that the other girl is a Brittany Fowler W/F and is dating a Douglas Jones B/M who is supposed to be affiliated with " Bloods ".

Ms. Thompson stated a short time later that she thought the incident may have occurred around Asheville Hwy. near Hearon Circle. She also stated that she thought she heard about 5 shots.

While speaking with Ms. Thompson she wasn't very forthcoming with information and seemed to be leaving certain information out.

ID officer T. Davis (I-65) responded and photographed Ms. Thompson's injury. Investigator Walsh also responded.

Supplement Mironenko M

SUPPLEMENTAL REPORT:

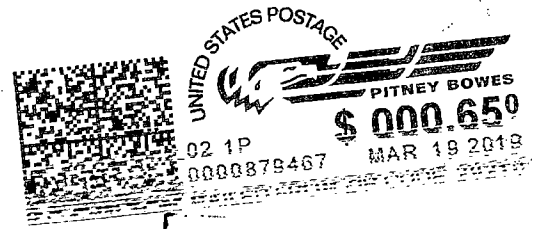
04/01/16-

Dispatch advised Deputy Byrd was chasing a vehicle in reference to a shooting. I was in the area of Howard street and Deputy Byrd advised the vehicle stopped at Victoria Gardens Apartments. RSU Deputy Noteboom advised one of the suspects ran behind the funeral home at Pearl and Howard Streets. I pulled we staged for a K-9 track. Deputy Taylor tracked the suspect and I was in the rear providing support. Behind the funeral home was a fence a drop off. The K-9 and lead deputies jumped the fence and I observed a shadow crouched behind a bush. The units were headed in his direction and I screamed "THERE HE IS!". I jumped the fence to position myself better so I would not be behind the K-9 units in case a fire fight erupted. As I landed I landed awkwardly on my left ankle and felt a pop. After the subject was apprehended I felt throbbing and swelling in my left ankle. I drove myself to code 35 and was met by ID and Sgt Kwas (D-3) for a 1st injury report.

04/11/16

DeAndre T. Foster #372302
Broad River Correctional
4460 Broad River Rd
Columbia SC 29210

Clerk of Court
Daniel E. Sheerouse
Post office Box 11330
Columbia, South Carolina 29211



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MAR 19 2019

BRCI
MAILROOM

LEGAL MAIL