

THE STATE OF SOUTH CAROLINA
In The Supreme Court RECEIVED

MAY 09 2019

APPEAL FROM Horry County S.C. SUPREME COURT
Court of Common Pleas
Steven H. John, Circuit Court Judge

Case No. 2016-002081

Arden P. Cato, II # 316535 Petitioner,
State of South Carolina v. Respondent

REPLY TO STATES RETURN ON
PETITION FOR WRIT OF CERTIORARI

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Respondents

PETITIONERS REPLY

Petitioner brings to the attention of this Court, that the Respondents litigation is not adequate enough to refute the issues presented by Petitioners' Initial Brief, Final Brief, Petition for Rehearing, and Petition for Writ of Certiorari. This Court should clearly see from Respondents Return that Respondents have taken the position of obstruction of justice:

- 1) Reply to Respondents Return, Statement of Facts pg. 4:

The Solicitor and Counsel stated that the gun jammed at the nightclub. (Respondents Supp. Rec. pg. 12, line 23 - pg. 13, line 13; and pg. 87, line 13-17)

How can an unfired bullet from a jammed gun be found in the parking lot where Cato's car had 'supposedly' been previously parked? And if it is somehow factual that an unfired 9mm bullet was found in a public parking lot where daily plenty of cars are parked and many people walk through it, how does it become a statement of fact that it belonged specifically to Petitioner Cato? How long was it already there prior to Cato parking there? Did it belong to someone

else? Was it planted there by the Myrtle Beach Police Dept.? Petitioner contends it is moot to continue to address the untruth in which no evidence substantiates, in Note 2 on pg. 1 of Respondents Return. (Respondents Supp. Rec. pg. 13, line 23-25).

These unanswered questions to Respondents Return Statement of Facts should show this Court that the assertion of Petitioner in reference to the errors and mismanagement of the SLED Ballistics Report are true. (Petitioners Rec. pg. 26-32). It's the very same errors and mismanagement of evidence by this Dept. in the case of Gary Wayne Bennett vs State, 2014 granting of P.C.R.

Reply to pg. 18-19 and Note 3, pg. 15 of Respondents Return Standard of Review:

The fact remains that the errors in the SLED Ballistics Report in this case have not been ruled on in detail. This Court will be pleased to correct this manifest injustice.

The record reflects, (Respondents Supp. Rec. pg. 150), that Petitioner did not have the SLED Ballistic Report at the P.C.R. hearing on April 3, 2007. The Report

was sent to Petitioner well after the P.C.R. hearing, on April 26, 2007, recieved at Lee C.I. mailroom on May 3, 2007.

Petitioner was addressing and referring to the lack of evidence concerning malice and intent to kill. Petitioner stated nothing to the effect of ever having the SLED Ballistics Report nor addressing ballistics. (Respondent's Supp. Rec. pg. 71, line 14-24).

Both counsel, knowing they were in error, being ineffective, attempted to coerse Petitioner into believing that an unofficial 2 page print out summary of the Report was the actual real Report. Petitioner had never seen the SLED Ballistic Report before and definitely did not have time to review the unofficial paper to accurately present his claims. (Respondent's Supp. Rec. pg. 58, line 21 - pg. 59, line 22).

Judge Paula H. Thomas being aware of the fact that Petitioner Cato did not have the Ballistics Report, left the file open in the case for review. (Respondent's Supp. Rec. pg. 51, line 19 - pg. 55, line 9).

Petitioner respectfully request that this Court carefully consider his consistency. (See Petitioner's Initial Brief, Final Brief, Petition for Rehearing and Question Presented II pg. 6-7 of Petitioner's Writ of Certiorari.)

2) Reply to pg. 6, Respondent Return Argument on Affidavits; Note 5, pg. 14, and Note 8, pg. 15 Respondent's Return Standard of Review.

How can it be possible that anyone who was in that crowded very dark nightclub that night, including Petitioners Affiants, would have been able to clearly see through the darkness to identify who was shooting?

In a state of panic and fearing for ones own life and survival, how can anyone in that type of environment accurately count the number of shots that were fired?

Apparently it is very true in fact that the Affiants were at the nightclub to witness all that they were able to. Detailing how they did come forward with this information after 10yrs only solidifies meeting all of the prongs of the Spang Test to be newly discovered evidence. (Petitioners Rec. pg. 15-21).

This Court should agree that it will take a hearing on the newly discovered evidence and/or a new trial to determine whether Affiants heard 'merely' echoes of shots fired by Cato, ricocheting bullets, or shots fired by the M.B.P.D. Incident Report identified shooter who ran out of that back entrance

Affiants are aware of, while Cato was at the front entrance. (Petitioners Rec. pg. 39).

The State does in fact need to prove which bullet hit which victim in order for Cato to be correctly charged with and remain convicted of ABTNIK. The errors in SLEDs Ballistics Report, the main evidence the State is relying on, is sufficient enough to overturn all Cato's convictions. (See Initial Brief, Final Brief, Petition for Rehearing, and Petition for Writ of Certiorari)

The witness in M. B. P. D. Incident Report, (Petitioners Rec. pg. 39), was indeed raised at P.C.R. where P.C.R. Judge left the file open for review. (Respondents Supp. Rec. pg. 51, line 19-pg. 55, line 9).

Therefore this critical piece of evidence included for review is not cumulative, rather it is supporting evidence as an affirmation of the fact that someone who is not Petitioner Cato, was on the inside of the club shooting and inflicting harm on the victims.

This fact in regards to the Questions Presented concerning the errors of the Circuit Court Judge and the S.C. Court of Appeals, from Petitioners Initial Brief, Final Brief, Petition for Rehearing, and Petition for Writ of Certiorari, this Court should agree that it is a miscarriage of justice, a manifest injustice that needs to be corrected, and on

injustice to the victims to not conduct a hearing or grant a new trial based on this fact.

It should be necessary for all parties involved, especially this Court to not speculate nor assume, rather instead to conduct a hearing and/or grant a new trial on Affiant Edwards hearing individuals discussing 'getting someone' having anything to do with or were involved in the shootings. Also, to the fact that Cato was not in the club near Edwards to be heard talking about anything. No evidence supports that allegation.

3.) Reply to pg. 12; and to Note 17 pg 20, Respondent Standard of Review

Petitioners litigations are being intentionally misinterpreted by Respondents. All of Petitioner Cato's litigations have been consistent in the applicability of Jamison and Spann by way of a Rule 29b motion. This Court is appropriate to detail clarity here by way of a correct opinion/ruling in Petitioners favor. For the failure and error of the Circuit Court Judge, and the S.C. Court of Appeals, this Court should Order a hearing and/or grant a new trial to determine

the new Jamison standard and correctly applying the Spann Test, by way of a Rule 296 motion. (See Petitioners Initial Brief, Final Brief, Petition for Rehearing, and Petition for Writ of Certiorari).

Petitioner ask this Court to please not overlook the erroneous misinterpretation of his litigation by Respondents. Petitioner is not arguing the S.C. Court of Appeals affirming the Circuit Court Judge John Order granting a new trial in State v. Gagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No. 06-65-26-0594.

Petitioner is articulating that this present case and the case of Gagnon are similar in how the new evidence was obtained, and as to the application of law, in particular Spann. Both of these cases with similar aspects came before the same Circuit Court Judge John. In order to maintain a consistency of established law, both cases should have the same ruling. Gagnon was granted, Coto was denied. Here Circuit Court Judge John is in error of law. With the S.C. Court of Appeals Affirming Circuit Court John denial of Coto, the S.C. Court of Appeals is in error regarding a novel question of law.

(Please modify the reading of the word [consistency] as [inconsistency] in Question Presented I.) on pg. 6. of Petitioners Petition for Writ of Certiorari).

Petitioner is entitled to the very same 'fundamental fairness' and correct application of Spann, that this same Circuit Court Judge gave Cagnon. This Court will find that the S.C. Court of Appeals final decision was in error in regards to the novel question of law upholding the 'inconsistency' of rulings established by Circuit Court Judge Steven H. John in State v. Cagnon, 2013 Order Granting New Trial Based on After-Discovered Evidence, Case No. 06-05-260594, and Petitioners Cat's After-Discovered Evidence wherein both cases the new evidence was obtained in similar fashion, reliable as to application of elements/law and should be ruled on similarly.

CONCLUSION

Pursuant to Rule 242, S.C. A.C.R. Petitioner respectfully request that the S.C. Supreme Court issue a Writ of Certiorari to review the final decision of the S.C. Court of Appeals.

May 7, 2009
Date

Respectfully Submitted,
Arden P. Cote, II
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Pro Se Petitioner

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Steven H. John, Circuit Court Judge

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Respondent,

v.

Ardon P. Cato, II

Petitioner

PROOF OF SERVICE

I certify that I have served the Reply to Respondents Return on Petition for Writ of Certiorari on A. McCrory Wilson, Atty. Gen. P.O. Box 11549 Columbia, S.C. 29211, J. A. Richardson, Sol. P.O. Box 1276 Conway, S.C. 29526, and S.C. Supreme Court P.O. Box 11330 Columbia S.C. 29211 by depositing a copy of it in US mail postage prepaid on May 7, 2019

May 7, 2019
Date

Ardon P. Cato, II

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