The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
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BRENDA F. SHEALY
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POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Mr. Justin Warner

FROM: Daniel E. Shearouse, Clerk

DATE: September 8, 2020

This Court has received your petition for a writ of habeas corpus.

☐ This Court cannot provide legal advice or assistance. Therefore, we are unable to respond to your legal questions. If you need legal advice or assistance, you should consult with an attorney.

☒ The underlying convictions and sentences are currently pending before this Court in 2020-000930. Since you are represented by counsel in this appellate case, no action will be taken on your *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

☒ Since you are represented by counsel in this matter(s), we are forwarding a copy of your letter to counsel.

cc: Robert Michael Dudek, Esquire (with copy of petition)
Office of the Attorney General (with copy of petition)

RECEIVED

AUG 28 2020

S.C. SUPREME COURT

IN THE SUPREME COURT
OF SOUTH CAROLINA

JUSTIN WARNER, Petitioner

Against

THE STATE OF SOUTH CAROLINA

Appellate case: 2017-001313
Anderson County
2016-GS-04-00159, 00862

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner JUSTIN ~~WALKER~~ WARNER hereby petitions this honorable Court for a Writ of Habeas Corpus to determine the legality of his imprisonment and says:

1, He is imprisoned by the State following his conviction for murder, attempted armed robbery, possession of a weapon during a violent crime and was sentenced to life in prison, following a jury trial on May 25, 2017 before Hon. R. Lawton McIntosh. Bruce Byrholdt and Bruce Harvey represented this defendant and Catherine T. Huey prosecuted as Deputy Solicitor.

2, Convictions were affirmed (State v. Warner, 430 S.C. 76, 842 S.E.2d 361, 2020) Rehearing was denied May 28, 2020. Petition for Certiorari to this Supreme Court was filed: c. July 20, 2020.

3, This conviction follows the robbery of a BP convenience store next to Interstate 85 in Anderson County in which Mradulaben Patel was shot and killed. There were no witnesses, except closed circuit cameras. Perpetrator wore sunglasses and a hat and obscured identification.

PROSECUTION BY CATHERINE HUEY RAISES THE PROBABILITY THAT THE TRIAL WAS FUNDAMENTALLY UNFAIR BY REASON OF PROSECUTORIAL DISHONESTY.

4, Ms. Huey has a history of misconduct by dishonesty and her prior prosecutorial bad acts are predictive of her misconduct in this proceeding. Those cases include, but are not limited to: State v. Karen McCall, (Huey repeatedly lied to the jury about evidence); State v. Angela Vaughn, (Huey repeatedly called the attacker in a self-defense case "the victim"); State v. John F. Kennedy (Huey told the jury "We have blood evidence" when she had none). Huey's prior bad acts establish that she is prone to dishonesty and that her bad acts can discredit the trial, as fundamentally unfair based on the prosecutor's dishonesty.

5, The crime was recorded by video equipment. The video apparently showed an individual enter the store. The individual wore a wide hat and a dark glasses which obscured his face making identification impossible by facial recognition.

THE IMMEDIATE POLICE INVESTIGATION STALLED UNTIL A CRIME STOPPERS TIP WAS RECEIVED WHICH IMPLICATED DEFENDANT WITH CANDID ADMISSION THAT THE POLICE ACTUALLY CALLED IN THE CRIME STOPPER TIP.

6, ATF Investigator Waymando W. Brown testified that Mr. Warner "He had already invoked his right to remain silent and did not respond after being Mirandized...." (N.T. p. 125-6) And further Mr. Warner did not testify at trial. Mr. Warner did not at any time indicate that he waived his right to silence. Police report of 11/18/15 indicates Warner refuses to talk with police . There is no trial record of who the Crime Stoppers informant was or how he knew all the details of the police investigation "to a T".

7, Chief Investigator Matthew Barnes Voight testified at pre trial motions "On the 4 th. (May, 2015) we received a Crime Stoppers tip that listed Mr. Warner as a suspect in the case. Immediately from looking at the tip, we noticed that the date of birth was the same date of birth that Ms. Patel had entered into the register during a transaction of tobacco purchase prior to the incident occurring. (P) Additionally, the tip listed in great detail the events that occurred in the store. That was very interesting to me because we only release certain sections to the media, the video surveillance.

And outside of watching the surveillance or someone being in there, I don't see how anybody could be - - could know that information.

(P) One of the key examples for me was a shell casing where the primer was punched as if like a firing pin had struck or whatever. **Unless someone was on scene when the evidence was collected, I don't see how they would know that and that was listed in the tip.** (P) Additionally, it described how the robbery happened almost to a T and how the shooting occurred almost to a T. The tip also described the vehicle that Mr. Warner was in that day, which was a gray Challenger, I believe. Challenger, Charger. (P) Let's see. Also in the tip it described the firearm as well which we could see from the video surveillance. It was silver on top, black on bottom. (N.T. p. 97-98) This is a candid admission that the police called in the tip. It is reasonable to assume police called in the fake tip to have "cause" to obtain search warrants against this defendant.

THE IDENTIFICATION OF THE DEFENDANT BY A POLICE ACTOR IN THE VIDEO IS INADMISSIBLE AS IMPLAUSIBLE AND IN VIOLATION OF THE BEST EVIDENCE RULE AND THE RIGHT OF THE DEFENDANT TO A JURY TRIAL IN WHICH THE FACTS ARE DETERMINED BY THE JURY, NOT A POLICE AGENT.

8, After the Crime Stoppers tip "From there, contact was made with Goolsby (Nathan Goolsby, Warner's probation officer in Georgia) .... Detective Mitchell also sent the snippet of the video down to Agent Goolsby and he was able to identify the defendant, Mr. Warner." (N.T. p. 98:24, 99:23-25) The perpetrator was hidden by a mask and hat. "He recognized his mannerisms." (N.T. p. 100:3)

9, At trial Nathan Goollsby former probation agent for Mr. Warner testified that he had seen Mr. Warner about "once a month ... eight or nine times during the course of from May to May of 20114 to 2015" (N.T. p. 348:21-23) for 15 to 20 minutes (p. 349:1) Ms. Huey asks: "And based on that (video) clip, were you able to determine who was in that video? A. Yes, ma'am, I was .... It was Justin Warner." (N.T. p. 350:20-24) It is implausible that the probation officer with minimal contact with the defendant could identify him from a video in which the perpetrator wore a hat and dark glasses with no facial recognition. There was no video line-up undertaken with alternative subjects to determine the accuracy of the identification.

10, Ms. Huey asks: "And what did you base that decision on? A. You know, it was with the hat and the glasses on, it was hard to see the face, but monthly visits with him and the time that we spent together, I was able to observe the way that he walked, the way he carried himself, and he exhibited the same signs. And then he was the same height and build. So everything that I was able to determine by watching it and looking at it, it did appear to be him. (pp. 351-352) (It appeared to be him he guesses) Ms. Huey argues to the jury: "Speaking of Nathan Goolsby, you also heard from him he was shown a clip of a media release, and it was his opinion that it was Justin Jamal Warner in that video by his gait, his mannerisms, his walk, that sort of thing...." (N.T. p. 625: 7-1) (not categorically, but "appear(s) to be him")

11, In fact, the jury sitting in the courtroom had probably more time observing the defendant than did the probation officer. The jury could watch him as he came into and left the courtroom, and could watch him for hours during the trial, far more that the probation officer did. The judge instructed the jury : "you will determine what the facts are...." (N.T. p. 231:18-19; p. 646:16;) "you and you alone are the sole judge of the facts of this matter" (p. 647:19-20) When Ms. Huey had her witness tell the jury who was in the video she usurped the role of the jury to determine who was in the video, and denied the defendant the right to a jury trial in which the jury "determines what the facts are."

12, The identity of the individual in the video might have been determined by the jury viewing the video, as the jury was the finder of facts. If the government needed more evidence of the defendant's walk or appearance the Court could have order exemplars taken much like it

would for fingerprints or DNA, which would allow the jury to determine the fact of who the individual in the video was.

13, Under the Best Evidence Rule, the identification of the defendant by the probation officer was inadmissible. The Best Evidence required the jury view the video and using the video, not the government's prejudicial opinion of it, determine if the disguised person in the video were the defendant. The probation officer's opinion was not best evidence, but tainted.

14, Owner Pravinchandra Patel reviewed the cash register receipt for the time of the incident. He reported that the customer showed his Identification as he was about to rob the store, and that his identification (showing his name and address, etc.) was shown to the clerk who he was about to rob and showed a birth date of April 23, 1990. To repeat, the person about to rob the store showed the robbery victim his identification so that he could legally buy a cigar and then rob the store. There is no explanation as to why the perpetrator would show the clerk his Name, to buy a cigar, then rob the store. There is no explanation as to why the perpetrator did not just steal the cigar and the cash without showing his identification. Ms. Huey has an obligation to produce other cases where an armed robber showed the victim his identity before a crime occurred.

PALM PRINT EVIDENCE IS UNRELIABLE AND NON-PROBATIVE.

15, Michael Steven Wheat testified that he put his hands on the counter. (N.T. p. 255: 3-5)

16, Ms. Huey: of fingerprint expert Christopher Warren Scott, "Were there other prints on this mat? (besides as palm print identified as from Mr. Warner)? Answer: "Yes" (N.T. p. 505: 21-22)

17, Mr. Byrholdt's question: "The testimony has shown there were six other people that came into that store between a period of time before the incident." (N.T. p. 508:10-13) (see: police report of 10/29/15) ; "six customers enter the gas station between the time the mat was wiped down and when the shooting occurred" all but one female were at the counter.) There was video of the decedent cleaning the counter approximately 45 minutes before the incident. Prints on top of prints would ruin the prints. Mr. Scott states: "I was not asked to identify (anything but Mr. Warner's palm print) N.T. p. 508:25) To make comparisons between known and latent evidence prints, Mr. Scott did real big blow-up of the (print) area .... Enlargement" (N.T. p. 503:13-20)

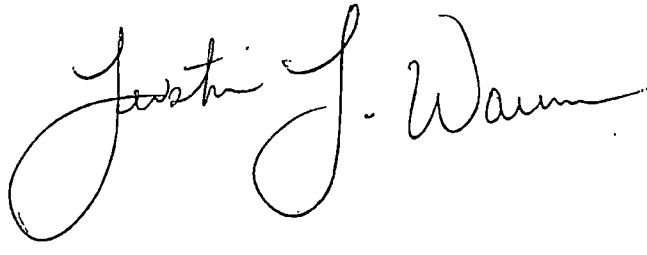
18, It is well established that finger prints are more difficult to fake than is DNA

evidence, but there s nothing to prevent a finger print expert from using a known print to create a false evidence print. All that needs to be done is to copy the known print.

19, Defense counsel did not notice that the probation officer was offering Not-Best-Evidence, and did not object. Defense counsel did object to whether Investigator Voight could offer his opinion on whether the perpetrator touched the counter mat, and left a palm print. (p. 436) Curiously the Court notes that "... the determination of a fact in issue do (sic) not require special knowledge (p. 437:4-5) .... Even with expert testimony, the area of their opinion requires that they have some kind of skill or experience or expertise that would be helpful to the jury in determining the issue." (p. 437:25-438:1-3) THE COURT: "Well,, he hasn't been qualified as an expert in this case so there's no expert testimony." (p. 438:23-24) This instantly applies to Investigator Voight, but Probation Agent Goolsby was not qualified as an expert (in identification of persons wearing hats and sunglasses), because he did not qualify as an expert, and as the Court held: expert testimony is admissible as opinion, but not if the jury were able to determine a fact without special knowledge. The Court holds: "(I)t's not admissible if the jury can draw the same conclusion." (p. 439:15-16) In the case of Goolsby's and Voight's conclusions, the jury certainly has the ability form their own conclusions, making Goolsby's and Voight's testimony inadmissible. The erroneous admission of that testimony denied the defendant his right to have the jury make the determinations of fact (U.S. Const. Amendments: VI, applicable to the states under Amendment XIV.) denying him the right to a jury trial. Efense counsel was therefore ineffective in protecting defendant's right to a fair trial.

WHEREFORE, this Court should grant habeas corpus, and such other and further relief as is just and proper, and further should order the investigation of Assistant Solicitor Catherine Huey, particularly, but not limited to the history of any jury trials she participated in.
Affirmed as true on information and belief,

Justin Warner, 372737
Lee County, F3-A-2124
990 Wisacky Hwy.
Bishopville, S.C. 29010
August 20, 2020
JW:mm



To: South Carolina Supreme Court, P.O.B. 11330, 1231 Gervais St. Columbia, S.C. 29201

IN THE SUPREME COURT
OF SOUTH CAROLINA

JUSTIN WARNER, Petitioner

Against

THE STATE OF SOUTH CAROLINA

Appellate case: 2017-001313
Anderson County
2016-GS-04-00159, 00862

MEMORANDUM OF LAW

PRIOR BAD ACTS OF THE SOLICITOR ARE GERMANE TO THE INTEGRITY OF THIS TRIAL AND DEMONSTRATE A PROPENSITY TO MISCARRIAGE OF JUSTICE.

When determining whether bad act evidence is admissible to show common scheme or plan, a trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence whether there is a close degree of similarity; when the similarities outweigh the dissimilarities, the bad act evidence is admissible under the bad act rule. Rules of Evidence, Rule 404(b) (State v. Wallace, 2009, 384 S.C. 428, 683 S.E.2d 275) (See also: State v. McCombs, 2014, 410 S.C. 90, 762 S.E.2d 744)

The trial court allowed defendant's prior conviction for armed robbery as *Crimen falsi* evidence. As noted above, (2) the government presented a murder/rape case, but declined to prosecute as a rape case because the evidence exonerated your petitioner. Since he was not guilty of the rape, he was obviously not guilty of the murder. And (3) the face cuts and scrapes the defendant exhibited could not be linked to defensive actions by the decedent, therefore your petitioner was not guilty of rape nor the associated murder, And, (4) the prosecution presented evidence of a blanket that maybe contained or maybe not contained a body became conclusively: "Amin dragging a body" (in the middle of the day, in a public parking lot) and (5) evidence of flight from police became evidence of guilt, instead of rational fear of police. The above are evidences of *Crimen falsi* deliberate dishonesty by the government, yet defendant's prior robbery conviction was a crime of dishonesty under Rule 609(a)(2) (State v. Al-Amin, 353 S.C. 405, 578 S.E. 2d 32, p. 425 [14,15] "We hold Rule 609(a)(2) provides for automatic admission of evidence of a prior crime of dishonesty without balancing of probative value against prejudicial effect." (Id. 426-7 [16]) This finding (for 'armed robbery) is novel to South Carolina. (415) but this Court of Appeals by the same logic finds that the government is subject to the same restrictions for dishonesty, but has not so applied the rule as is required by "equal

protection." The government's witnesses are clearly impeached by the prosecutor's dishonesty.

"There is no constitutional or other federal legal principle that bars the introduction of evidence of prior bad acts where relevant to proving an element of the crime charged.... The Due Process Clause of the Fourteenth Amendment is violated only where the evidence in question is so extremely unfair that its admission violates fundamental concepts of justice." (Dowling v. U.S. 1990, 494 U.S. 342,352, 110 S.Ct. 668, 674) (See also Estelle v. McGuire, 1991, 502 U.S. 62, 73, 112 S.Ct. 475, 482) In this case the prejudicial effect far outweighed the probative effect. (U.S. v. Hall, 2017, CA-4, 858 F.3d 254)

BEST EVIDENCE RULE WAS NOT CONSIDERED:

The Best Evidence rule provides that only the authentic unaugmented video is admissible. (SC Rule: 1002: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." see: Riddle v. City of Greenville, 1968, 251 S.C. 473, 163 S.E.2d 462, Sample v. Gulf Refining, 1937, 183 S.C. 399, 191 S.E. 209) Where transcripts in English are made of foreign language conversations, a stipulated transcript is in order, or failing that, each side may introduce its own version of the transcript. (U.S. v. Rengifo, CA1, 789 F.2d 975, 983)

RIGHT TO JURY TRIAL

A directed verdict of guilt is absolutely impermissible. "The Due Process Clause of the Fourteenth Amendment denies the States the power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense. Jury instructions relieving States of this burden violate a defendant's due process rights. Such directions subvert the presumption of innocence accorded to persons and also invade the truth-finding task assigned solely to juries in criminal cases.... That courts should ask whether the presumption in question is mandatory, that is, whether the specific instruction, both alone and in the context of the overall charge, could have been understood by reasonable jurors to require them to find the presumed fact if the State proves certain predicate facts. " (Carella v. California, 109 S.Ct. 2419, 491 U.S. 263, 265)

"These mandatory directions directly foreclosed independent jury consideration of whether the facts proved established certain elements of the offenses...." (Id. See also: Martin v. Warden, 653 F.2d 799, [10] 1981; Sandstrom v. Montana, 442 U.S. 510, 1979; Rock v.

Zimmerman, 729 F. Supp. 398, 1990;

FINGERPRINT, EVIDENCE SIMILARLY TO DNA ANALYSIS IS SUBJECT TO ERROR

"And that is to say nothing of the intentional DNA-evidence tampering scandals that have surfaced in recent years...." (U.S.S.C. citing: Murphy, The New Forensic Evidence , Criminal Justice, False Certainty ..." 95 Calif. L. Rev. 721, 772-773, (2007) below:

"E.g. FBI DNA-lab scandal; analyst substituted false controls ; Massachusetts crime lab revealed "instances in which laboratory officials entered the same genetic profile under two different ID numbers in the database... and reported... DNA results in four cases matched genetic material from old rape cases, when they did not.... (Murphy, p. 773)

Whereas a faulty hair comparison may wrongly inculpate someone in one case... " (Murphy, p. 775)

USE OF FALSE EVIDENCE MAKES THE TRIAL A VIOLATION OF DUE PROCESS.

"As long ago as Mooney v. Holohan, 294 U.S. 103, 294 U.S. 112, (1935) this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'. This was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942). In Napue v. Illinois, 360 U.S. 264 (1959), we said 'the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.. Id. At 360 U.S. 269. Thereafter, Brady v. Maryland, 373 U.S. at 373 U.S. 87, held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution." (Giglio v. U.S. , 405 U.S. 150, 153, 92 S.Ct. 763, 766; see also: Banks v. Drerke, 540 U.S. 668, 124 S.Ct. 1256; Cash v. Maxwell, 132 S.Ct. 611 (2012) ; Alexander v. Shannon, 2005 WL 1213903; Sistrunk v. Rozum, Ed. Cir., 674 F.3d 181 (2012)) The use of a bag of broken glass, represented to be a murder weapon to the jury, unsuitable for testing or even visual confirmation is clearly incompatible with the rudimentary demands of justice as a due process violation rendering the verdict unsustainable.

"In considering a motion for a new trial, a trial judge may weigh the evidence and consider the credibility of the witnesses, and if he finds the verdict is against the weight of the evidence, is based on false evidence, or will result in a miscarriage of justice, he must set aside

the verdict, even if it is supported by substantial evidence." (King v. McMillan, 4th Cir., 2010, 595 F.3d 301; Bryant v. Aiken Regional Medical Centers, 4th Cir. 2003, 333 R.3d 536; see also: Cline v. Wal-Mart Stores, Inc. 4th Cir. 1998, 144 F.3d 294)

"Evidence may be false either because it is perjured, or though not itself factually inaccurate, because it creates a false impression of facts which are known not to be true." (Hamric v. Bailey, 4th. Cir. 1967, 386 F.2d 390)

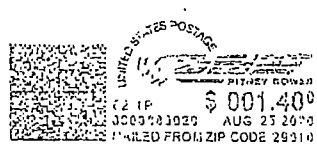
Admission of improper evidence, which requires confrontation, such as a "dying declaration" that was not made with knowledge of impending death, is admitted as an abuse of discretion.... (U.S. v. Williams, 2011, CA4, 632 F.3d 129, 133 [3,4,5], citing Chapman v. California, 87 S.Ct. 824, 826, 386 U.S. 18, 22) and was not harmless constitutional error because there was essentially no other evidence of guilt. (Id. 133, 134 [6]) The spots on the pants, were never identified as blood, even though linked to the decedent possibly from the prior incident or from mucus or sputum, and which were erroneously argued to the jury as certain blood. "We find that this prejudice alone is enough to require that the conviction be vacated." (Id. p. 134)

CONCLUSION

This trial was fundamentally unfair and requires reversal.

Justin Warner, 372737
Lee County, F3-A-2124
990 Wisacky Hwy.
Bishopville, S.C. 29010
August 20, 2020
JW:mm

Justin Warner #372737
Lee County F3-A-2124
990 Wisacky Hwy
Bishopville, SC 29010



South Carolina Supreme Court
P.O. Box 11330
1231 Gervais st.
Columbia, SC 29201

THE DEPARTMENT OF CORRECTIONS HAS NOT OPENED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENT.
LEE CORRECTIONAL INSTITUTE
SC DEPARTMENT OF CORRECTIONS

RECEIVED
AUG 25 2020
LEE CI MAIL ROOM

QUALITY PARK
9 x 12