PCR

Dear Clerk,

Enclose, would you please find for filing, one notice of intent to appeal and petition in response to Respondent Final order of dismissal dated March 22, ~~20~~ 2013.

Would you also be so Kind to send me a clark stamp copy for my Self. As well as forward a copy to Assistant Attorney General office Ashleigh R. Wilson.

As I do appreciate your assistant. Thanking You in advance

Tarone Johnson
#260921
5/2/13

RECEIVED

MAY 06 2013

S.C. SUPREME COURT

The State of South Carolina
County of Charleston

Tarone D. Johnson #260921
Petitioner,

vs.

The State of South Carolina

Respondent,

South Carolina's Supreme Court

Court of Appeals

Notice of intent to Appeal

P.C.R. Petition: 2011-CP-10-7095

Purpose: I, Tarone D. Johnson, inmate #260921. Do here
1.) by ask to approach South Carolina's Supreme Court with a Notice of intent to appeal. Respondent's 'final order' of dismissal of said P.C.R. petition 2011-CP-10-7095.

This Notice of appeal is in accordance with rule 203/243 (SCRCP). And do supply this court with valid reasons as to why this petition should be granted.

c.c. file: South Carolina's Supreme Court Clerk, Daniel Shearhouse

Assistant attorney General's office, Ashleigh R. Wilson

State of South Carolina County of Charleston	In the Court of Common Pleas
Tarone D. Johnson #260921 Plaintiff,	2011-CP-10-7095
vs.	Objection to Respondent's 'Final order' of dismissal.
State of South Carolina Respondent,	Pleading: Structural error = Actual innocense

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S.C. SUPREME COURT

Opening Comments:) The actions / inactions of Trial Counsel Harry Shaw severily presudice Petitioner to a fair and impartial trial against the State of South Carolina. as an in-effective assistance of Trial Counsel claim. Over-

1.) whelms the P.C.R. Court AEDPA one year statute of limitation's provision, does not bar. According to governing laws. Due to the fact that Collateral attack, would be a Petitioner's first opportunity to Challenge an in-effective assistance of Trial Counsel claim.

There-fore, to dismiss Petitioner's petition solely because the Attorney General's office happen to quote a few sentenc- -es incorporated with-in, does not constitute the fact finding

2.) Process. How-ever, Respondent do attempt to insult the intelligents of this Court as well as My own (Petitioner). By not arguing one single Case law or citation in defense of Petitioner's accusations. Yet, Continuously proclaims before this

1.) Court that Petitioner's allegations are not worthy of the Court's attention. When, according to South Carolina's laws and the laws governing the United States. Petitioner's Comprehension of what those laws mean or interpreted as, are shown through out Contestion. And do warrent a special evidentiary hearing.

2.) See; McCray vs. State; 408 S.E. 2d 241,
In the absences of findings of facts, it is improper for the P.C.R. Court to deny a defendant's Motion for relief on his allegations of in-effective Assistance of (Trial) Counsel.

3.) See; South Carolina's over-standing.
South Carolina's Code Ann. § 17-27-80, States, "The Court Shall make specific findings of facts and State expressly its Conclusions of law, relating to each issues presented!

4.) See; South Carolina Rules of Civil Procedures, (SCRCP) Ruling on a rule 12(b)(6), Motion to dismiss must be based <u>Solely upon the allegations.</u>

5.) See; The Supreme Court of South Carolina has urged that P.C.R. orders be Cautiously prepared in order to address all issues raised by an applicant. Pruitt vs. State, 423 S.E. 2nd 127 (1992)

6.) Upon reading just a few of South Carolina's case-laws and Statutes. Warrents an immediate investigation into Respondent's files pertaining to this case. As Respondent is asking this Court to openly trespass that body of Laws which governs this state Criminally incline.

7.) If ~~states that~~ Petitioner is due an opportunity to be heard according to law. Then, it is criminal intent for Respondent to wish to deny Petitioner that (one bite) at the apple

1.) he so rightously deserve by law. Especially if Petitioner's theory prove to be more ~~practically~~ logical.

2.) See; Mc Cray vs. State, 408 S.E. 2d 241 (1992), The S.C. Supreme court ruled that remand for a New P.C.R. hearing was Neccessary/Necessary where the P.C.R order failed to make findings of facts on the specific allegations raised.

3.) To now deny Petitioner an opportunity to be heard. While he's directly at the threshold of the Court's door. To finally have his issues adjudicated. Would be Criminal fraud.

4.) See; Hilton head Center of South Carolina. Inc vs. Public Service Comm'n, 294 S.C. 9, 11; 362 S.E. 2d 176, 177 (1987) It is "fraud that induces a person not to present a case or deprive a person of the opportunity to be heard."

5.) As the case history will prove. The issues incorporated with-in have not been Considered by one Judicial body. Meaning the issues involve have not a ruling upon them as of yet.

6.) See; Pruitt vs. State, issue must be raised to and ruled on by the P.C.R. Judge in order to be preserved for review.

7.) As the record speaks loud & Clear. The issues have never been address by the Court's and it is a State Law which Mandates that before Summary dismissal can take place. An over-standing of the propose issue, according to law, would have to be made.

8.) Rule 52(a) SCRCP provides that in "actions tried upon facts with-out a jury, the Court Shall find facts specially and State seperately its Conclusions of Law."

1.) Delaney vs. State, 238 S.E. 2d 679 (1977)
Prohibits the Summary dismissal of an application with-out an evidentiary hearing where the application sets forth with Specificity allegations that can not be Conclusively refuted on the bias of the record before the lower Court.

2.) See; White vs. State, 208 S.E. 2d 35 (1974);
a defendant has the procedural right to one fair bite at the apple.

3.) Petitioner further states that for the Court's to dismiss Petitioner's petition. When South Carolina's Code ann §17-27-70(c) Authorizes the court to "grant a Motion by either party for Summary disposition of (an) application when it appears from the pleadings . . . that there is no genuine issue of Material fact and the Moving party is entitled to judgement as a Matter of Law."

4.) The Justices of the Court had openly denied petitioner's Motion to dismiss Respondent with-in said Habeaus Corpus petition 2010-CP-10-4421. Then demoted to a P.C.R. petition. filed 2011 Nov, 15 4:59 p.m. By Julie J. Armstrong Charleston County Clerk of Court.

5.) To now grant Respondent's Motion to dismiss. When Neither Court have address the specific allegations incorporated with-in. Would be counter-productive and displays a rather profound level of impartiality from the justices of the Court. Especially, when Petitioner's initial claim is in-effective assistance of trial Counsel.

6.) Substantial showing of Trial Counsel's ineffective assistance.

7.) See; Transcript Volume V. pg. 226. Lines 15-25

1.) (Where upon the court received a note at 7:50)
(from the jury.

2.) The Court: Counsels

3.) Mr. Shaw: I have seen it.

4.) The Court: oh, you all have seen it?

5.) Mr. Beck: Yes Sir.

6.) The Court: Suggestions, Allen Charge or not or what?
It's kind of Confusing.

7.) Mr. Beck: I don't think they said they are dead-lock.
They are saying it is possible that we are.

8.) The Court: Well, they say we are not in agreement.

9.) Mr. Beck: But they haven't said they are dead-lock.
So I don't think it is the appropriate time
for an Allen Charge. I think the response
would be. Yes it is possible to be dead-lock
let us know.

10.) The Court: If you are dead-lock, let the Court know.

11.) Mr. Beck: Yeah.

12.) The Court: Do you agree?

13.) Mr. Shaw: Yes Sir.

14.) The Court: It is possible to have a hung-jury. If this
is the case, please notify Me. Every-body

in agreement.

1.) Mr. Beck: Yes Sir.

2.) The Court: All right.

3.) First Count: Please be Mindful that this is the jury's first time exclaiming to the Court that they are in a disagreement. Wether they come/came back into open court or not, use the words disagreement or dead-lock. It all still implying the Same Notion.

4.) (The Court received another note from the jury at 8:04)

5.) This is now the Second time the jury is proclaiming to be dead-lock.

6.) (The following proceeding transpired in presences of jury.)

7.) The Court: I'm going to give them an allen charge. Bring the jury in.

8.) The Court: Ladies and Gentleman, I got your note saying that you can't reach an agreement. The jury is hung. In this regards. I'm going to give you an additional charge. It has to do with reaching a verdict.

9.) Mind you, The Trial Judge is now embarking upon ~~the~~ instructing the jury to deliberate a third time upon Petition-er's guilt or innocenses.

10.) See; South Carolina Code Ann. § 14-7-1330
The import of this Statute is that a Trial Court is prohibited

1.) from sending out a jury for further consideration if the jury (1.) has had "due and thorough deliberations" on the question presented and (2.) return a second time with-out having agreed upon a verdict, Unless (3.) The jury request further instructions. Id

2.) Although the jury was not brought back into open court on their first exclamation of dis-agreement. It must be acknowledge that upon their first time back into open court. It was also their second time informing the court that they were in a state of dis-agreement. As statute 14-7-1330 second prong clearly states.

(2.) return a second time with-out having agreed upon a verdict.

3.) Upon Critical analyzation of the jury's deliberation process. It becomes clearly evident to see that the Trial Judge's Allen Charge to the jury was indeed coercive.

How and Why?

4.) Petitioner's jury actually began deliberation round 4:15 p.m. that after-noon. Before informing the court's at 7:50 approximately 3 hours later that they were in a state of dis-agreement. Which would had given them plenty enough time to consider the matter at hand. Yet, still, they return dead-lock or in a state of dis-agreement.

5.) Trial Counsel's strategy failed to move for a mistrial during this process was / is a clear example of in-effect- -ive assistance of Counsel. Which deprived Petitioner of his 6 amendment right to effective assistance against the state.

1.) See Trial Judge coercive statement rendered in the Allen Charge. Tr. pg. 230, lines 2-8

2.) (Quote) Hence; "and we will go through this entire process again. So, I'm going to ask you, at this time, To deliberate further and see if you can not write a verdict in this case."

3.) What's particularly crucial to recognize here, is that, no-where in that Allen Charge can there be found the Trial Judge admonishing the jury not to surrender their honest conviction for the sake of returning a verdict.

4.) So, in other words, we have a coercive allen charge that is un-lawful. Coupled with the Trial Judge failure to admonish language. Creating for Petitioner a double whammy situation. Which Trial Counsel failed to object to either or!

5.) See; Allen vs. United States, 164 U.S. at 492 (1989) The Supreme Court approved of the Trial Court's practice of admonishing a dead-lock jury to make a further effort to reach a verdict. How-ever, Courts have either rejected the use of the Allen Charge or adopted modified versions. Any Change in an allen Charge must meet the requirements that such instructions not be coercive.

6.) See; United States vs. Strothers, 77 F.3d at 1389 (D.C. Cir. 1996) (Reversal due to Trial Judge's failure to give the required admonition not to surrender honest conviction.)

7.) These issues become very significant and life size. When the instant is paired with the Trial Judge inferance instructions to an un-educated Jury in regards to law and their duty, or responsibility as a juror.

1.) The Trial Judge Un-Constitutional Malice Charge given to the jury just Minutes prior to the coercive Allen Charge. Is instrumentally important in that it began to delineate a very well thought out precipitated onslaught of plain-error instances.

2.) That, when, retrospectively piecing back together Petitioner's Trial. Petitioner by no means according to law. Was not found to be guilty of the offense of Murder. But for a better Choice of words. 'Made to be guilty.' By the un-ethical practice of Conspiring amongst Law Professional practioner's.

3.) See Trial Judge's instructing the jury to infer Malice. Transcript volume pg. 214, lines 14-25

1.) The words express or implied do not mean different Kinds
2.) of Malice but merely the Manner or way in which the
3.) only Kind of Malice Known to Law may be shown to exist,
4.) that is either by direct or indirect evidence or "inference."
5.) Malice may be expressed as where previous threats of
6.) vengence or lying in wait or other circumstances shown
7.) directly that an intent to Kill was really entertained. Malice
8.) may also be implied as where, no expressed intent to Kill
9.) is proved by direct evidence, it is indirectly, but Necessarily
10.) "inferred" from facts and circumstances which are proved.
11.) Malice may be "implied" or "inferred" from the willful,
12.) deliberate and intential doing of an un-lawful act with-out
13.) just cause or legal excuse. If a person using a deadly
14.) weapon deliberately and intentionally and with-out just cause
15.) or legal excuse takes the life of another, "Malice" may be
16.) "inferred." If facts are proven beyond a reasonable doubt
17.) sufficient to raise an "inference of Malice," to your satisfaction
18.) this inference would be simply an evidentary fact to be
19.) taken into consideration by you the jury along with other

20.) evidence in the case and you may give it such weight
21.) as you determine in should have. In any event, any
22.) such implication or "inference" in no way lessens the
23.) burden on the State to prove Malice beyond a
24.) reasonable doubt. (Emphasis Added)

1.) See; *Houston vs. Dutton*, 50 F.3d 381, 385-386 (6th Cir.) instructions telling jury to infer Malice from Unlaw-ful act or use of a deadly weapon Unconstitutionally shifted the prosecutor's burden of proof.

2.) Now See; Trial Judge Malice Charge in comparison to Case Law lines 13-16.

> If a person using a deadly weapon deliberately and intentially and with-out just cause or legal excuse takes the life of another, "Malice" may be "inferred."

3.) It is now factually proven in the record that the Trial Judge's Malice Charge given to Petitioner' jury, unconstitutionally shifted the prosecutor's burden of proof.

4.) Coleman vs. Butler, 816 F.2d 1046, 1048 (5th Cir. 1987) Fourteenth Amendment prohibits use of presumption in jury Charge that relieves state of burden of persuasion on essential elements of Charge offense.

5.) See; closing argument of Prosecutor Peter Beck in regards to Petitioner's involvement in the Killing of Charles Bennet. (Tr. Volume V, pg. 138, lines 15-17.)

6.) Now, a big part of this case is intent, Knowledge, because we are not claiming here that this Defendant was the actual Shooter.

1.) If Petitioner is believed not to be the actual Shooter in this incident even by the prosecution. Then Petitioner's involvement must be proven else-where beyond a reasonable doubt in that area he's expected to had participated.

2.) Had Petitioner not ridden back in the car with then, alleged Murder Suspect, Co-defendant Gourdine that night of the incident. What evidence did the Police possess that would had alerted the officers to Suspect Petitioner?

3.) See; Closing argument of defense Counsel's statement in regards to Some pennies foundt.

4.) Trial transcript volume V. pg. 172, lines 8-13

5.) And the Solicitor is making a lot of noise about 21 pennies that got found over in Mrs. Miles back yard and the fact that the evidence people return to Tarone Johnson 153 pennies. Well, yeah, it was 153 pennies and 37 dimes and four nickels and one quarter.

6.) See; Testimony of Tarone Johnson being cross examine by Mr. Beck in regards to the Change received from Police evidence room.

7.) Transcript volume V, pg. 115, lines 17-25

Q. and you are not denying that when you went to the property room you were given 153 pennies?

A. I was given a plastic bag, what-ever amount of change that was in there! You Know, that was given to Me.

Q. You went to Claim your property, Mr. Johnson. You put your signature there.

A. I went to claim my watch.

Q. This was your gold watch there that you

(Continue on page 116, lines 1-6)

also pick-up.

A. and my necklace

Q. are you saying that you weren't entitled to that money.

A. It was some change in the car. You know. Jason keeps change in his car.

1.) It is now very much evident that the pennies foundt on Mrs.-Miles property helped sealed Petitioner's fate in this conviction. How-ever, there is no finger-prints taken from the supposed evidence. as it is imperative to Petitioner-'s well being that this Court acknowledge. That if, Co-defend-ant Gourdine was the (only) actual suspect in this case. Then, all evidence leading to Petitioner, would have had to first follow the path leading first to Gourdine. And, according to defense attorney Ms. Shealy declaration to Gourdine's jury. There is none!

2.) See; closing argument of defense attorney Ms. Shealy. Gourdine's transcript, volume V; pg. 575-576, lines 20-25 and 1-6

1.) Let's now think about what we have learned from the
2.) Police in this case. There's no gun. There are no-finger
3.) prints except on the Mitsubishi. Well, obviously, that's
4.) explainable. It's his car. There are no finger-prints on
5.) Sabrina's car. There are no-finger prints on Jasper's car.

6.) There are none on the air conditioning unit. There
7.) are none on the power switch. There are no fibers,
8.) there are no-foot prints. None of the clothing of
9.) Jason was sent out to sled to make any kind
10.) of comparison that night.

1.) See; also, Ms. Shealy's elaboration on evidence.
Gardine's Transcript, volume V. pg. 578, lines 1-4,

1.) There is (no) evidence in this case as to what Time
2.) that 9.1.1. call came in. none. So who knows how long
3.) Jason was sitting in the parking lot waiting for an officer.

2.) Petitioner now offers the following September 9, 2002
Appeal hearing Material record obtained from Appellate
Defense (para-Legal) Aileen P. Clare representation of
Tarone D. Johnson #260921. in opposition to the Respondent
for the State of South Carolina.

3.) Here, we shall see as proof. Evidence that not only
highlights but clearly supports Petitioner's theory in regards
to how his conviction is based solely on an Un-Constitution
-al inference. By witnessing the extent of Respondent's
argumentative premise.

4.) First and foremost, Respondent wishes for this court to
believe that the evidence compiled against Petitioner is
sufficient enough to sustain a test of durability. Petitioner
seeks to challenge Respondent's theory with facts taken
out of Respondent's propose argument during that appeal
hearing back in Sept, 9, 2002.

See; Argument, Section B. page 9. Labeled
Evidence Showing Petitioner's Liability for Murder

Exhibit

on the basis that he was present as an aider and abettor, or (3) as a confederate under the "hand of one is the hand of all" theory, which holds that one who joins with another to accomplish an illegal purpose is liable criminally for everything done incidental to the execution of the common design and purpose. See State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). The trial judge charged the jury on all of these issues. **{R. pp. 857-59}**.

B. Evidence showing Petitioner's liability for murder

Viewed in the light most favorable to the state, the following testimony and evidence shows Petitioner's commission of the crime as either a principal second or under the "hand of one is hand of all" theory:

(1) **Motive** - By his own admission and the testimony of others, Petitioner was at Sabrina's house when his friends Jason and Chris were fighting with the men there. Because of this fight, Petitioner's best friend Chris was arrested.

(2) **Motive** - By his own admission and the testimony of others, Petitioner helped Jason remove the mailboxes from under Jason's car as Antwan, Marlo, and Jasper chased them throwing bricks.

(3) **Intent, Identity, and Joint Participation** - Bystander Mary Mathewes testified that the two groups of young men were yelling at one another. Antwan testified that Petitioner yelled, "we'll be back" before they skidded away; Jasper thought Jason said it. Jasper also heard Petitioner yell to Jason, "give me the gun, give me the gun".

(4) **Identity** - In his second statement, Petitioner asserted he and Jason returned to Sabrina's to find Jason's gun. They parked on a street behind Sabrina's trailer, and took the path into her backyard. This was corroborated by Sabrina's neighbor Mary Miles, who testified she looked out of her window and saw two men jump over her fence into Sabrina's yard.[2] Moreover, 21 pennies were discovered near the fence, and Petitioner ultimately signed for 153 pennies from the jail property room when he was released.

(5) **Joint Participation** - Sabrina testified she was on the phone when her

[2] **{R. pp. 478-81}**.

(3.) Intent, Identity, and Joint Participation - Bystander Mary Mathewes testified that the two groups of young men were yelling at one another.

(4.) Identity - In his second statement, Petitioner asserted he and Jason returned to Sabrina's to find Jason's gun. They parked on a street behind Sabrina's trailer, and took the path into her back yard. This was corroborated by Sabrina's neighbor Mary Miles, who testified she looked out of her window and saw two men jump over her fence into Sabrina's yard. More-over, 21 pennies were discovered near the fence, and Petitioner ultimately signed for 153 pennies from the jail property room when he was released.

1.) Respondent seems not to recognize that, what Mrs. Mathewes is seeing, does not constitute grounds to say Petitioner participated in a shooting death. In fact, by the time the actual shooting took place. Mrs. Mathewes was no-longer in position to see down Easy Street, being that she had already left the scene when the shooting happen. There-fore eliminatin-g any positive identification.

2.) Also, No-where in number (4.) paragraph does the state proclaim that Ms. Miles made an actual identification of Petitioner or Co-defendant Gourdine as the two person in her yard. There-fore, who exactly is making the positive identification of Petitioner at the time of the shooting. As Ms. Mary Miles nor Mrs. Mary Mathewes is placing Petitioner at the scene when the shooting occurred.

To create doubt. Petitioner would like to direct the Court's attention to see.

1.) See; Scott Perry being Cross Examine by Mr. Shaw, Tarone Johnson Transcript. Volume V. pg. Lines 16-23

Q. Talking about what was actually going on at the crime scene and every-thing else, there had been a report of Two black males at the Hardee's with a gun, handling a gun?

A. Yes, I believe there was.

Mr. Shaw: That is all I have. Thank You very Much.

2.) It should be Noted that the Hardee's in question is less than a Minute and a half walk away from Ms. Ross Easy Street resident's.

3.) Plus, further more, upon Knowing that Neither witness is actually making a positive identification of Petitioner at the time of the shooting. It is un-lawful for the court's just to assume because Petitioner collected some coins from the North Charles-ton (City Hall) police property control room located on Mall drive. Where Co-defendant Gourdine's car was first impound. The records of Leeds Ave. Al-Canon detention center will clearly show that upon Petitioner's release from North Charles-ton county jail. He Neither possess nor collected the coins in discussion, until weeks later. Dispelling any theory of Respondent's, of the coins being in Petitioner's possession where it could be dropped, the night of the shooting.

4.) It should also be noted, that from the record. We can acquire Two seperate incidents in time where Petitioner was the one willing to speak with officers about the current events. Neither time meeting with officers did Petitioner ever refuse to speak or portray a defiant attitude towards them.

1.) Please read as evidence, Petitioner's cordial invite towards officers.

2.) See; attach exhibit. Labeled; Argument I. Please read in the last paragraph, Second Sentence. Read as follows.

Police arrived. They interviewed and released Petitioner, and arrested Chris. Petitioner left on foot.

3.) See, also as proof Lt. Cumbee's testimony to support. Transcript volume I, pg. 14, lines 13-16.

Q. and, in fact, officer Cumbee, did the defendant agreed to talk with you?

A. Yes, he said he would give a statement on the incident that took place.

4.) Here, the record clearly shows that Petitioner possess no qualms with speaking to officers. How-ever, because Petitioner chose to invoke his fifth (5th) amendment right not to divulge officers with an elaborate detailed description into their where abouts in his first statement. Should not had rendered him a suspect for the officers to press for information.

5.) See, also Cumbee's testimony. Transcript volume I, page 16, lines 3-7,

Q. and what was the decision made with regards to that first statement that he made?

A. We did not believe that he was telling the Truth at the first statement that he made to Detective Perry.

Exhibit

ARGUMENT

I.

The trial judge erred in denying appellant's motion for a directed verdict.

Petitioner was accused of participating in the shooting death of Charles Bennett. The state presented no physical evidence at trial. It presented testimony as follows.

Sabrina Ross (Sabrina) lived with her five children at the trailer home on Easy Street, in North Charleston. Jasper Lloyd (Jasper) was the father of one of her children, and Chris Rivers (Chris) was the father of two of her children. Jasper disliked Chris. Jason Gourdine (Jason) was Chris' first cousin. ROA p. 234, line 4 -p. 240, line 3.

On June 8, 1997, Jasper was babysitting for Sabrina. They met up with Charles Bennett, known as "Petie" (the victim in this case), and planned a cookout. Sabrina and Jasper went to the grocery store, where they saw Steven Moses (Steven), a friend of Chris and Jason's. During the cookout that evening, Jason's car arrived carrying Jason, Chris, and petitioner. Sabrina called the police because she feared Chris would vandalize her car. ROA p. 241, line 1 - p. 244, line 8. Chris entered and confronted Jasper. Jason and petitioner followed. A brawl ensued. Police arrived. They interviewed and released petitioner, and arrested Chris. Petitioner left on foot, followed by Jasper and Antwan Lloyd (Jasper's first cousin and a cookout guest). Jason started his car, forced Jasper and Antwan into a ditch, and hit a mailbox. He picked petitioner up. Several witnesses, including a restaurant patron who knew none of the participants, testified that petitioner and Jason were followed by a gang of men, who were cursing, throwing objects at the car, and threatening its occupants. One witness, who was not corroborated, testified that petitioner said, "We'll be back." ROA p. 244, line 22 - p. 252, line 6; ROA p. 400, line 1 - p. 410, line 4; ROA p.

(Continue on Lines 15-25)

Q. Did you talk with the Defendant any-more that evening?

A. Yes, I did.

Q. Okay. And the next time you saw him did you say any-thing to him?

A. Yes, Sir, I did.

Q. and what did you say to Mr. Johnson?

A. I went back into the interview room. Detective Perry had taken the Statement. I told him that he needed to tell the Truth, this was his Chance up at bat and not to blow it.

1.) Lets be for real, Why would officers read an individual whom both officers proclaim was free to go had he chose not to speak. His Miranda rights if they are only there for Conversation?

2.) Proof of non-existing evidence can be found in the fact that Appellate defense Aileen P. Clare was left to argue only the denial of a direct verdict Motion and a suppression of an alleged second Statement. Because even as late as Sept 9, 2002. The State of South Carolina still does/did not possess any evidence in this case.

See, as evidence, Exhibit, Question Presented.

QUESTIONS PRESENTED

1. Did the trial judge err in denying appellant's motion for a directed verdict?

2. Did the trial judge err by denying appellant's motion to suppress a statement made under physical and psychological duress amounting to coercion?

! first !

STATEMENT OF THE CASE

Charleston grand jurors indicted petitioner for murder. Petitioner was tried during the September, 1999, term of the Charleston County Court of General Sessions before the Honorable Daniel F. Pieper and a jury. The jury found him guilty as charged, and he was sentenced to life confinement. The Court of Appeals affirmed petitioner's conviction and sentence and denied his timely filed petition for rehearing. State v. Johnson, Op. No. 2002-UP-574 (S.C. Ct. App. filed September 17, 2002).

This petition follows.

1.) Again, as late as Sept 9, 2002. The State of South Carolina still did not possess any evidence in this case. Which could be corroborated only by acknowledging the fact that Appellate Defense (para-legal) Aileen P. Clare could not attempt to make an argument else-where, in regards to other evidence, such as, I/eye witness testimony. Because there actually was none!

2.) See; proof evidence page (6.) Ms. Clare's declaration theres no-evidence.

1.) The State was required to prove that appellant
2.) participated in the crime. There was no physical
3.) evidence what so ever: No gun, no traced bullets,
4.) no gunpowder residue, No finger-prints, No foot prints.
5.) ~~In~~ ~~fact~~ Jason did not testify, and he is the only
6.) one who could have placed appellant at the scene!
7.) In fact, Jason was fully exonerated on the same
8.) facts alleged against appellant -- except the tainted
9.) Confession discussed below.

10.) The Court of Appeals affirmed on the basis that
11.) the evidence was sufficient to find Petitioner guilty
12.) under our "hand of one is the hand of all" theory!
13.) Petitioner submits that the State did not produce
14.) competent evidence to convict him of Murder under
15.) any theory. Aside from his coerced Confession, there
16.) was no evidence that even placed him at the scene.
17.) His conviction is unjust, and he should be released.

3.) It is now evident, by comparison. That in Sept 9, 2002. Appellate Defense Ms. Clare is making the same declaration as co-defendant Gourdine's Defense Attorney Ms. Shealy made two years prior. That there is no evidence.

Exhibit

neither were identified as appellant or his co-defendant. Even if one of the men were appellant, his presence would not prove his guilt. Green, supra. The state was required to prove that appellant *participated* in the crime. There was no physical evidence whatsoever: no gun, no traced bullets, no gunpowder residue, no fingerprints, no footprints. Jason did not testify, and he is the only one who could have placed appellant at the scene. In fact, Jason was fully exonerated on the same facts alleged against appellant -- except the tainted confession discussed below. See transcript of State v. Gourdine, ROA p. 885.

The Court of Appeals affirmed on the basis that the evidence was sufficient to find petitioner guilty under our "hand of one is the hand of all" theory. Petitioner submits that the state did not produce competent evidence to convict him of murder under any theory. Aside from his coerced confession, there was no evidence that even placed him at the scene. His conviction is unjust, and he should be released.

1.) Please read lines 2-4

Quote; There was no physical evidence what-so-ever: no gun, no traced bullets, no gun powder residue, no finger prints, no foot prints.

Lines 15-16

Aside from his coerced confession, there was no evidence that even placed him at the scene.

2.) This fact can be proven with the utilization of Respond-ent very own declaration.

3.) See; Argument, Section D. Labeled; There was sufficient evidence to create a jury question on wether Petitioner's participated in the Murder.

1.) Evidence of Petitioner's participation in the shooting
2.) primarily comes from his admission in the Second
3.) Statement that he cut the power to Sabrina's trailer.
4.) a 'reasonable inference' is that Petitioner cut the
5.) power to aid Jason in his assault, either by luring
6.) the victim outside to investigate, creating cover of
7.) darkness, Creating confusion among the occupants
8.) inside, or preventing them from seeking help.

Webster dictionary defines primarily to mean:

'In the first place.'

4.) This is entailing that the coerce Statement is basicly what the -is relying upon to seal Petitioner's fate in this conviction. How-ever, just like Defense Attorney Ms. Shealy proclaimed in Co-defendant Gaurdine's case

Exhibit

Schrock, which also reversed the denial of a directed verdict where the evidence only showed that the defendant was in the area and footprints found where the defendant admitted walking were similar to those at the crime scene. Martin, 340 S.C. at 603, 533 S.E.2d at 575 (discussing Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984)). Martin concluded:

> Like the footprints in Schrock, the possibility that it was the same car, without any other evidence placing the defendants at the scene, is not enough evidence to place Defendant inside Victim's apartment.

Martin, 340 S.C. at 603, 533 S.E.2d at 575.

Here, there was direct evidence in the form of Petitioner's statement that he was present at the scene, and this was corroborated by other evidence. Martin and Schrock are thus distinguishable. See State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990) (Schrock distinguishable, and directed verdict properly denied, where defendant was seen following victim's car toward scene, victim and defendant's car seen parked at scene, and carpet fibers found at scene matched fibers from defendant's car).

D. There was sufficient evidence to create a jury question on whether Petitioner participated in the murder.

Evidence of Petitioner's participation in the shooting primarily comes from his admission in the second statement that he cut the power to Sabrina's trailer. A reasonable inference is that Petitioner cut the power to aid Jason in his assault, either by luring the victim outside to investigate, creating cover of darkness, creating confusion among the occupants inside, or preventing them from seeking help. Indeed, Sabrina testified that the loss of power made her cordless phone inoperable. **{R. pp. 252-53}**. Such an overt act

Inferring

1.) 2 years earlier. That there was/is no evidence. Appellate Defense Ms. Clare is also making the same proclamation in 2002 in Petitioner's behalf when we read lines 15-16

2.) Aside from his coerced confession, there was no evidence that even placed him at the scene.

Now read lines 7-9

3.) In fact, Jason was fully exonerated on the same facts alleged against appellant -- except the tainted confession discussed below.

and lines 2-4

4.) There was no physical evidence what so ever: No gun, no traced bullets, no gunpowder residue, no finger prints, no footprints.

5.) With all that was just read. That information now brings us full circle back to Respondent proclaiming in Section D. Lines 1-3

A.) Evidence of Petitioner's participation in the Shooting primarily comes from his admission in the second statement that he cut the power to Sabrina's Trailer.

6.) As already proven to be in-admissible. The State attempts to base Petitioner's conviction solely on the alleged second statement. Asided from the alleged statement. Neighbor Ms. Mary Miles testimony does not lend support in regards to being evidence of Petitioner's participation in the Shooting. As she can't tell this Court

1.) wether she specificly saw Petitioner and Co-defendant Gaurdine. OR the other two Black males that was radio in ~~from~~ by dispatch just minutes ago. Who was handling a gun in Hardee's parking lot. Now in her back yard. Being that no-where in the files does it state that any-one in particular made an eye-witness identification.

2.) Let's now read line 4.

3.) <u>a reasonable inference is that Petitioner cut the power to aid Jason in his assualt.</u>

4.) Respondent would have this court to just presume Petitioner's guilt in this offense with out any direct evidence what so ever. As Defense Attorney Ms. Shealy for Gaurdine and Appellate Defense Ms. Clarke are both stating that there is no evidence in this case. Which could ~~only~~ be corroborated with the rather late indictment and the fact that four years after Petitioner's Conviction. Trial Defense Attorney Harry Shaw still refuses to give up his files in this case. As if, he's got some-thing to hide.

5.) Besides that fact, The Trial Judge's Un-Constitutional Malice charge elevated to astronomical precedents. When Judge Pieper instructed the jury to simply infer Petitioner' guilt where they have no proof evidence.

6.) Respondent's '<u>reasonable inference</u>' caupled with the Trial Judge instructions to infer. Is quite a bit to much presuming for one case.

7.) for instance, the pennies foundt on Ms. Miles property is presume to be Petitioner's solely because he

1.) Collected some coins from the city of North Charleston property control room located on Mall drive. How-ever, if we re-examine the 'word phrase' of Solicitor Peter Beck cross examination of Petitioner Tarone Johnson on the matter. We would come to over-stand that Petitioner did not possess the coins the night of the shooting.

2.) Let's examine the testimony of Tarone Johnson being cross examine by Mr. Beck. Transcript volume V. pg. 115, lines 19-23

Q. And you are not denying that when 'you went' to the property room you were given 153 pennies?

A. I was given a plastic bag, what-ever amount of change that was in there. You know, that was given to me.

Q. 'You went' to claim your property, Mr. Johnson. You put your signature there.

3.) Upon close examination of Solicitor Peter Beck select choice of words 'You went' greatly insinuate that Petitioner had to go some-where other than where he was currently at, in order to collect his Jewelry that was impounded. Due to being left inside Gourdine's Car when officers impounded it, in search of possible evidence.

4.) How-ever, being that most modern day County jail facility today, docket all material possessions immediately upon arrival. Solicitor Peter Beck's utilization of the words, 'You went.' Speaks also that upon Petitioner's release from Al-Canon Detention center on Leeds Ave.

1.) 3841 address, North Charleston. He did not originally possess the coins in question, until he went to claim his property from North Charleston City Hall property control room, Located on Mall drive. On the other-side of town.

2.) And just by happen chance. The Jewelry was collected together with the coins inside one plastic zip-lock bag, as vehicle's personal possession. Where-as, the coins Number ratio lends credibility more-so to Petitioner's theory than Respondent.

3.) Please turn back to pg. 14. of this Motion. paragraph (4.) last sentence.

Quoting Respondent; More-over, 21 pennies were discovered Near the fence, and Petitioner ultimately signed for 153 pennies from the jail property room when he was released.

4.) Here, that sentence statement in and of it-self, have greatly distorted the Truth of what actually occurred. As Solicitor Peter Beck Select Choice of the words, 'You went.' Clears up as well as distenquish for us the in-accuracy of Respondent's files on this Matter.

5.) Respondent would have this court to believe, that immediately upon Petitioner's release from North Charleston County jail! That Petitioner signed for the coins. How-ever, Solicitor Beck's Choice of words 'You went' provides a ~~slightly~~ different tale from that of Respondent.

Respondent's theory of Petitioner signing for the coins immediate-ly upon his release from County jail. Would make the State's theory all the more plausible. But Solicitor Beck

Page
↓

is not actually saying what Respondent is saying. With the utilization of the words 'You went'. As Solicitor Peter Beck is clearly on a different-from that of Respondent. So again, Petitioner states that there is way to much presuming for a trial case that is suppose to be decided on matters beyond a reasonable doubt.

See harmful sentence in Trial Judge's Malice Charge. return to pg.(9.) of this Motion. Lines 7-10.

quote; Malice may also be implied as where, no expressed intent to kill ~~[illegible]~~ is proved by direct evidence, it is indirectly, but necessarily 'inferred' from facts and circumstances which is proved.

That sentence was damaging in that. We have now heard from Two Defense attorneys proclaiming that there is no evidence in this case. With that said, The Trial Judge's words. quote;

"No expressed intent to kill is proved by direct evidence, it is indirectly, but necessarily "inferred" from facts and circumstances which are proved."

The only facts which is proved, is that Petitioner those had an earlier incident/altercation with the occupants at Ms. Russ Easy Street resident's that day. Besides that, there was Petitioner signing for and collecting some coins from North Charleston City Hall property control room weeks after his release.

There-fore that sentence becomes extremely harmful. In that there is absolutely nothing for Petitioner's jury to infer besides the earlier incident.

1.) Although the Trial Judge's words are different in comparison to Sandstrom vs. Montana, 442 U.S. 510, 514 (1979) The Supreme Court held that the Trial Court's instructions to the jury that "The Law presumes that a person intends the ordinary consequences of his voluntary acts." Created an Un-Constitutional Mandatory presumption on the element of intent. The Court held that this instructions deprived the Defendant of due process because it was susceptible to an interpretation that removed the prosecution's burden of proving the element of intent beyond a reasonable doubt.

2.) So again, Although the Trial Judges words are completely different by Comparison. They are yet the same in regards to what they both Create. That being a Mandatory presumption

3.) See; Francis vs. Franklin, 471 U.S. 307, 315-316 (1985) The Court held that an UnConstitutional Mandatory presumption in one part of the jury instructions can not be cured merely by other language in the instructions indicating that the Defendant may rebut the presumption.

4.) Presumption of Law, is a rule of Law that a particul-ar inference shall be drawn by a Court or Jury from a particular Circumstance, State vs. Dodd 46 S.E. 228, 231

5.) Presumption of Law are of two Kinds, Conclusive and disputable, and the former are rules determing the quantity of evidence requisite to support of any particular averment which is not permitted to be over-come by proof. While disputable presumptions are those that may be over-come by proof. But in the absences of opposin-g evidence the Law will infer the existance of one

1.) fact from the proved existance of another. Modern Woodmen of America vs. Kincheloe Ind, 93 N.E. 452, 453

2.) a presumption of Law is equivalent to a substantive rule of Law to the effect that a particular effect Must be assumed when another particular fact or group of facts exist until the assumed fact is rebutted by substantial evidence. Shepard vs. Midland Mut Life Ins. Co, 87 N.E. 2d 156-161

3.) When reading the following on Presumptions of Law. We first must acknowledge that there is nothing that is making the State presumptions conclusive in this proceeding. Where-as, it becomes safe to say, that we are dealing with a disputable presumption that meets out that the presumptions can be over-come by substantial evidence. (or the lack there of). a particular effect must be assumed.

4.) In comprehending what a presumption of Law indeed Mandates. The effect that a particular effect must be assumed when another particular fact or groups of facts exist until the assumed fact is rebutted by substantial evidence.

5.) It is a proven fact that Petitioner and Co-defendant Gourdine both took and pass the gun residue analysis test administered by officers.

6.) It is now a proven fact that Petitioner's allege second State, due to coercion of officers, is in-admissible in a court of Law.

1.) It is a proven fact that officers process the crime Scene area and discovered no physical evidence what's so ever, linking Petitioner to this event.

2.) It is also a proven fact that not one single witness is making an eye/I, witness identification of Petitioner during the time of the Shooting.

3.) So if, as a presumption of Law stipulates, that a particular effect must be assumed when another particular fact or groups of facts exist. Then this court is to assume that Petitioner, Much like Co-defendant Gourdine, is also not guilty of the offense of Murder, until substantial evidence prove other-wise. The State of S.C. can not Legally just make Petitioner guilty of the offense.

4.) See; Comments by Solicitor Peter Beck, Gourdine's Transcript, Volume V. pg. 597, lines 23-25

5.) This is when they were dispatched to go to the Bi-Lo to meet Him. We Know what happen in between here. He had

(Continue on pg. 598, line 1)

6.) enough time to dispose of the gun, to wash his hand

7.) With out Petitioner's alleged Second statement. The State of S.C. had absolutely nothing against Co-defendent Gourdine. Where-as we have Solicitor Peter Beck pre-supposing a scenario of '<u>what if</u>' and '<u>could have beens</u>' to the jury. In hopes of possibly selling a believable scenario.

1.) How-ever, how far fetch would the Solicitor theory have to be before it is recognize as absurd and clear-ly illogical, when placed opposite of logic.

2.) See; Solicitor Peter Beck Comments. Transcript, Volume V. pg. 598, lines 5-7,

3.) <u>When Ms. Miles saw them in the back yard, they had pennies, — — one of them had them in their pockets and deposited them in order to avoid detention.</u>

4.) Again we see the state using the pennies to place Petitioner at the scene of the crime! How-ever, upon Critical analyzation of the Solicitor's Comment. It is quite illogical for a person carrying a pocket full of coins as the Solicitor is suggesting. To deposit 21 pennies in hopes of possibly avoiding detection due to the rattling of the coins. When there is 153 other pennies, 37 dimes, 4 nickels and 1 quarter left.

5.) With that said, Trial Defense attorney Harry Shaw's representation of Petitioner was grossly ineffective assistance. Especially when the numerous exclaimed errors incorporated with-in are placed in its proper perspect-ive according to governing Laws. Leaves us only to conclude that attorney Shaw's representation did not meet the necessary requirement established in Strickland vs. Washington.

6.) Strickland vs. Washington, 466 U.S. 668;
That the right to effective assistance of Counsel ensures that Defendant's have a fair opportunity to contest the charges against them. a Defendant has a valid ineffective assistance claim when ever he has been denied that opportunit-y, regardless of the Law on which Counsel's errors are based.

1.) Petitioner invites this court to read the following Martinez vs. Ryan amended argument filed March 18, 2013. In relations to this petition, referencing how the AEDPA provision 'does not bar,' ineffective assistance of Trial Counsel claims. As so stipulated with-in Martinez. Much like Martinez, Petitioner is not stating that his grounds for relief exist with-in his ineffective assistance of P.C.R. Counsel Claims. As that claim merely helps to show cause.

2.) It is the ineffective assistance of Trial Counsel claim, that Petitioner relies upon, as grounds for relief. Being that Counsel's performance greatly under-mine the out come of the Trial. Which can not be explain any other way, when we acknowledge, that 'not one, but Two' Defense attorneys in completely seperate proceeding are both proclaiming that there is no evidence in this case. Coupled with Respondent's very own declarations that Petitioner's Conviction primarily rest on the alleged Second State-ment.

3.) So, with no one actually making an eye witness identification of Petitioner at the time of the shooting. And there is no physical evidence what's so ever.

4.) Cronic vs. United States, 466 at 660
The presumption that Counsel's assistance is essential requires us to conclude that a trial is Un-fair if the accused is denied Counsel at a critical stage of his trial. Similarly, if Counsel entirely fails to subject the prosecution's case to Meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process it-self presumptively unriable.

1.) We can not now pretend that Counsel's lackadaisical approach to Petitioner's representation. Did not grossly effect the out come of Petitioner's Trial. As Counsel's failure to object to the Trial Judge's coercive Allen Charge and Un-Constitutional Malice Charge. Created plain-error instances that when Crictically examine under a light, inherently exist, Structural errors. Which the Law states can not be cured by harmless error analysis. There-fore a reversal of the conviction is required. When-ever such an incident do/does occur.

2.) Also, Trial Counsel's representation was so off point. That Solicitor Peter Beck was able to Miraculously acquired Petitioner's identification at the scene of the crime. Even with-out any-body actually saying they saw Petitioner rightly before or shortly after the shooting. Where-as, we have Two Defense Attorneys at completely seperate occasion stating that there is no evidence in this case. And Respondent themselves practically stating the same thing. When Respondent say that Petitioner's conviction rest primarily on the alleged second statement. Plus, P.C.R. Counsel Douglass Truslow representation was ineffective assistance.

That said, this court should reverse and remand back to the lower Court for an evidentiary hearing.

Signature: Tarone D. Johnson

Johnson

Hwy
ille S.C. 29010
2145
ard

The Supreme Court of S.C.

Daniel Shearhouse
Clerk of Court
P.O. Box 11330
Columbia, South Carolina

LEGAL MAIL ONLY

PCR

Dear Clerk,

Hello, and How are You?

My first order of business, would be to inform You. To please dis-regard the name listed on the surface of this envelope as return sender. And acknowledge that this Notice of Appeal derive from sender Tarone D. Johnson, inmate #260921. Specificly in regards to (P.C.R.) petition 2011-CP-10-7095. Located in Lee Correctional Inst. 990 Wisacky Hwy. Bishopville S.C. 29010. Darlington - North - 2145. East yard.

Also, would you please clerk stamp file this Notice of appeal and return a copy of it back to Me. As well as forward a copy to the Attorney General's ~~#~~ office.

Thanking you in advance

Sincerily T. Johnson 260921

4/27/13

The State of South Carolina
County of Charleston

Tarone D. Johnson
#260921
Petitioner,

VS.

The State of South Carolina

Respondent,

South Carolina's Supreme Court
'Court of Appeals'

Notice of Appeal:

for 'final order' of Dismissal
Petition 2011-CP-10-7095

1.) Purpose: I, Tarone D. Johnson, inmate #260921. Do here by approach South Carolina's Supreme Court with a notice of intent to appeal. Respondent's final order of Dismissal. According to Rule 203 (SCRCP). Stemming from a Denial of (P.C.R.) Post Conviction Relief 'final order' dated 3/22/13. Notice signed by Circuit Court Judge Roger M. Young.

2.) issues was not rule on and preserved for the record. As according to governing Laws. There-fore, leaving Petitioner blind and ignorant of those Laws in relations to the Allegations incorporated with-in Said P.C.R. petition. Petitioner have a Constitutional right to Know those Laws which governs his conviction. Being also why the granting of this petition is so important.

Kojo S. Omeon # 98517
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