UNITED STATES SUPREME COURT

IN THE SUPREME COURT OF THE UNITED STATES

JUNE 2018, TERM

CASE NO._____

MARCUS BLALOCK

Petitioner-Appellant,)

)

vs.) Application No. 17A497

STATE OF OHIO, et al,)

Respondent-Plaintiff)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH APPELLATE DISTRICT COURT IN CUYAHOGA COUNTY, OHIO

MARCUS BLALOCK, pro se

I.D. #420-813

P.O. BOX 788

Mansfield, Ohio 44901

Petitioner-Appellant

QUESTIONS PRESENTED

1. WHETHER PETITIONER WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW; WHEN THE TRIAL COURT FAILED TO FOLLOW THE LAW OF THE CASE DOCTRINE FROM A PREVIOUS APPEAL IN THE SAME CASE.
2. WHETHER PETITIONER WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW; WHEN THE COURT RULED THAT THE INFORMATION CONTAINED IN HIS MOTION FOR NEW TRIAL DID NOT CONSTITUTE NEW EVIDENCE. THIS SAME EVIDENCE WAS ALREADY CONSIDERED NEWLY DISCOVERED IN A PRIOR COURT OF APPEALS DECISION IN THEIR REVERSE AND REMAND IN THE SAME CASE.
3. WHETHER PETITIONER WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW; WHEN HE WAS NOT AWARDED A NEW TRIAL BASED ON THE FACT, THAT HE HAD PROVEN THAT HE WAS ACTUALLY AN INNOCENT PERSON.
4. WHETHER THE MISCONDUCT BY THE PROSECUTING ATTORNEY REQUIRES THAT PETITIONER SHOULD BE AWARDED A NEW TRIAL.

PARTIES

The Petitioner is Marcus Blalock, pro se litigant, and is seeking relief from the judgment entered in the courts by the parties below named as the Respondent(s).

The Respondent(s) are The State of Ohio, et al, Michael O' Malley, Attorney for the Plaintiff, and the Court of Appeals Eighth Appellate District, Cuyahoga County, State v. Blalock 2017-Ohio-2658

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Motion for Extension of time to file petition for a Writ of Certiorari

C. State v. Blalock, Case No. 104773 (May 26, 2017)
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D. State v. Blalock, Case No. 104773 (May 04, 2017)
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APPENDIX "B"

1. Transcript of Ernest McCauley's trial, Prosecution's different theory

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at; Appendix [D] to the petition and is reported at State v. Blalock, 2017-Ohio-2658

The opinion of Cuyahoga County Common Pleas court appears at; Appendix [I] to the petition and is reported at State v. Blalock, 2014-Ohio-934

The Journal Entry of The Supreme Court of Ohio denying jurisdiction appears at; Appendix [A]

JURISDICTION

The judgment of the Court of Appeals of Ohio for the Eighth Appellate District was entered on May 04, 2017. An order denying a petition for rehearing was entered on May 26, 2017, and a copy of that order is attached hereto as APPENDIX [C]

On May 02, 2018, Justice Kagan for the SUPREME COURT OF THE UNITED STATES, extended the time for filing this petition to and including June 30, 2018, is attached hereto as APPENDIX [B]

STATUES AND RULES

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Sixth Amendment: Right to Confrontation

Fourteenth Amendment: Due Process Clause, Section 1.

STATEMENT OF CASE

Only so much can be recited of the history of this case as is necessary for a determination of the issues presently before this court. In case No. CR 407194 defendant was indicted on May 03, 2001 along with Dion Johnson, Ernest McCauley and Arketa Willis in three counts of aggravated murder involving the death of Howard Rose on March 23, 2001. In addition, defendant was charged with one count of kidnapping, one count of aggravated robbery, and one count of having a weapon under a disability.

In case No. CR 407947 defendant was indicted on May 29, 2001 along with Dion Johnson, Ernest McCauley and Arketa Willis charged with one count of tampering with evidence and one count of obstructing justice alleged to have occurred on March 24, 2001. At his arraignment defendant entered a plea of not guilty.

Trial commenced on August 13, 2001. The court accepted a waiver of a jury trial on the count alleging having a weapon under a disability. On August 27, 2001, the jury returned verdicts of guilty of murder with a firearm specification and aggravated murder with a firearm specification as to counts one, two and three of the indictment. Defendant was found guilty of kidnapping with a firearm specification charged in count four and guilty of aggravated robbery with a firearm specification charged in count five.

The supplement was a statement made by co-defendant Ernest McCauley in August of 2006.

While defendant's motion for new trial was pending, co-defendant Ernest McCauley was called back to the trial court. At that time the prosecutor coerced McCauley to make a false statement against defendant Marcus Blalock, which McCauley states he never signed, and the statement was false. See Appendix [H] (Tr.28-38). The Confrontation Clause of the Sixth Amendment, made applicable to the states by virtue of the Fourteenth Amendment, ***Pointer* v. *Texas* (1965), 380 U.S. 400**, provides: "In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him." This provision is the embodiment of traditional preferences for testimony of a witness who can be cross-examined and who can be observed face-to-face by the trier of fact. See ***Mattox* v. *United States* (1895), 156 U.S. 237, 242-243; *Ohio* v. *Roberts* (1980), 448 U.S. 56, 63-64**. Also this was prosecutorial mis-conduct; for the prosecutor to knowingly use false testimony to uphold a conviction. See: **Napue v. Illinois,** 360 U.S. 264 (1959).

On October 05, 2009 the court dismissed, without holding the hearing that it ordered, which was set for April 13, 2007. This was a violation of petitioner's due process rights to the Fourteenth Amendment to the United States Constitution.

Drake testified that Ernest McCauley informed him that Arketa Willis was telling a lie; that she had setup Marcus Blalock for the murder of Howard Rose for which he was imprisoned. See: Appendix [H] (Tr.8).

After Arketa Willis was released from Prison, McCauley and Willis had phone conversations that he was able to listen to. After learning of this information Drake contacted defendant Marcus Blalock. He also received a phone call from Marcus Blalock after Drake was released from prison. See: Appendix [H] (Tr.9-10). Drake and defendant talked about the situation. Drake informed Blalock that Arketa Willis was writing letters and talking on the phone.

As a result of this information Drake signed an affidavit on or about April 2013, attesting to what he had known. The information was transmitted to defendant's attorney and an affidavit was prepared. This was only several months after Drake received a call from Marcus Blalock. See: Appendix [H] (Tr.11-12). Defendant's phone call was from Lake Erie Correctional Institution where he was transferred to from Trumbull Correctional Institution. In this phone conversation, Drake disclosed the information that he heard from listening to the calls between Arketa Willis and Ernest McCauley. See: Appendix [H] (Tr.12).

When he was questioned by the court Drake again confirmed that McCauley called him to listen to these phone calls while he was in prison. Drake testified that he probably listened to four or five phone calls. See: Appendix [H] (Tr.19).

The next witness to testify was Ernest McCauley, who was a co-defendant at the time charged with crimes involving the death of Howard Rose. The other co-defendants were Arketa Willis, Dion Johnson and Marcus Blalock. See: Appendix [H] (Tr.23).

McCauley testified that he had not had his trial when Marcus Blalock went to trial. He had been sentenced to a federal prison first and later transferred to the Lake Erie Correctional Institution. While he was housed at the Lake Erie Correctional Institution Marcus Blalock was at Trumbull Correctional, and was not transferred there until 2 years after Ernest McCauley was released. At the institution McCauley came to know Shannon Drake. He testified that while he was in prison he received letters and had phone conversations with Arketa Willis. According to McCauley, Arketa Willis, during these phone conversations essentially admitted that she had set up Marcus Blalock. These conversations were overheard by Shannon Drake. See: Appendix [H] (Tr.26). These conversations were recorded at the institution. They were produced pursuant to a court order by a federal judge See: Appendix [H] (Tr.27).

A. That's correct. See: Appendix [H] (Tr.37-38).

McCauley, on cross-examination, further testified that Willis had initially told him that she caused the death of Howard Rose. This was only when she told him that Howard Rose was already dead. See: Appendix [H] (Tr.38). McCauley testified that the only involvement of defendant was when he was requested to come to the home to help move the body of Howard Rose out the house. See: Appendix [H] (Tr.39).

The motivation of Willis, in accusing defendant of his involvement in the death of Howard Rose, was her claim that defendant had abused her. See: Appendix [H] (Tr.41-42).

Again McCauley testified that he did not sign any statement. The statement was completely false and that his signature was forged. See: Appendix [H] (Tr.44).

The only reason McCauley did anything in connection with the case was that he would get a reduced sentence. In fact, he did get a reduced sentence although he did not sign the affidavit or statement requested by the prosecutor. See: Appendix [H] (Tr.46).

The court then called Attorney Thomas Shaughnessy as a court's witness. When shown the statement or affidavit of Ernest McCauley, he said he had no independent recollection of the document.

He claimed he would not notarize anything unless the person signed it in his presence. See: Appendix [H] (Tr.52).

After the testimony of Thomas Shaughnessy, McCauley was further questioned. He produced samples of his signature. See: Appendix [H] (Tr.55-56). McCauley again stated that he did not sign the document. He only wrote the statement because his attorney at the time told him that the prosecutor needed McCauley to write a statement so that it could be used in order to challenge a post-conviction motion filed by the defendant. See: Appendix [H] (Tr.56).

Again, McCauley insisted that the signature on the affidavit or statement was not his signature and that the contents of the affidavit are not accurate. See: Appendix [H] (Tr.58-59). At that point, defendant Marcus Blalock was called to testify.

Blalock testified that he learned that Shannon Drake had some information while he was confined at the Lake Erie Correctional Institution. Blalock had not seen Shannon Drake since 2002 while he was confined at the Trumbull Correctional Institution. See: Appendix [H] (Tr.64). During his conversation with Shannon Drake, defendant learned that Arketa Willis had set him up to take the fall for the death of Howard Rose. See: Appendix [H] (Tr.64-65).

Defendant testified that he spoke to Shannon Drake sometime near the end of March 2013. See: Appendix [H] (Tr.67).

REASONS FOR GRANTING THE PETITION

1. Due process of law would require a lower court to remain faithful to the prior opinion of a superior court, in this case, The Court of Appeals for Cuyahoga County. The trial court ruled that the affidavit of Shannon Drake did not constitute new evidence. This is belied by the facts in this case. [46], quoting **State v. Blalock**, 2014-Ohio- 934, the record in this case is replete with new evidence that is material to the issues at trial and casts serious doubt on the validity of the jury's verdict. Furthermore had the evidence of Willis' motivation to lie been available at trial, there is a strong possibility that the trial would have produced a different result. See: **Nolan v. Nolan**, 11 Ohio St. 3d 1,462 N.E. 2d 410 (1984), Also See: **Fiore v. White**, 531 U.S. 225 (2001).
2. The Court of Appeals reverse and remand was March 13, 2014, and in that journal entry and opinion, See: Appendix A [I] at 52. Reversed and Remanded with instructions for the trial court to hold a hearing to determine whether Blalock was unavoidably prevented from discovering the **"new evidence"** presented in his motion for leave to file a motion for a new trial. The ruling on June 28, 2016 would be self contradictory, See: Appendix [E & F].

The Appellate court has ruled this evidence constituted newly discovered evidence. Moreover, the ruling in this case, appears to be at odds with the ruling on a similar case in; **State v. King**, Case No. 103947-949, 2017-Ohio-181 (2017). Also See: **Lawrence v. Chater**, 516 U.S. 163.

3. The trial court did state that Blalock was unavoidably prevented from discovering the new evidence. See: Appendix [G]. Trial courts Journal Entry and Opinion granting leave. To wit, the statements made by Shannon Drake as articulated in his affidavit about Willis' motive to lie and to implicate Blalock in Rose's murder. See: **Miller v. Miller** (1960), 114 Ohio App. 235 [19 0.0. 2d 108]. Also See: **Thomas v., Viering** (App. 1934) 18 Ohio Law Abs. 343, 344, and **Sibbald v. United States** 37 U.S. 488
4. The court determined that the single document on its face support's Blalock's. claim by clear and convincing evidence that he was unavoidably prevented from timely discovering this evidence. See: Appendix [G] at trial courts conclusion. To later rule otherwise when motion was filed for new trial was an injustice. The trial court even stated in it's conclusion that a hearing date will be scheduled upon completion of briefing, however that hearing never took place as the court stated. To deny petitioner a right to a fair trial violates the Fourteenth amendment to the United States Constitution.

Also See: **Napue v. Illinois**, 360 U.S. 264 (1959), and **Douglas v. Alabama**, 380 U.S. 415 (1965).

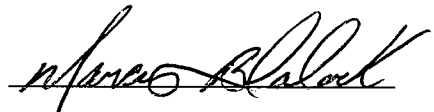
7. It was a violation of petitioner's due process rights to the Fourteenth amendment to the United States Constitution; to prosecute petitioner for any crime when the State knew that someone else was the principal offender, but withheld the information until after Blalock was convicted. When the trial began in co-defendant Ernest McCauley trial the prosecutor argued another theory. This theory was contrary to what he argued at petitioner Blalock's trial. See: Appendix B [1]. Also this was improper under the judicial estoppel doctrine whose..."purpose is to protect the judicial process,'...by prohibiting parties from deliberately changing positions according to the exigencies of the moment,'...***New Hampshire v. Maine,*** 532 U.S. 368, 749-50 (2001). This doctrine applies to the government and is even applicable in a single proceeding. ***United States v. McCaskey,*** 9 F .3d 368, 378-79 (5th Cir.1992).

For these seven compelling reasons petitioner prays that this court grants Petition for Writ of Certiorari. The State Court of last resort in this case has decided an important federal question in a way that it conflicts with the decisions of other state courts of last resort, and of the United States Court of Appeals; and the State Court decisions conflict with relevant decisions of this court. As stated in Rule 10 (b).

CONCLUSION

Petitioner prays that this court grants the Writ Of Certiorari, because the trial court was obligated, and duty bound pursuant to the Fourteenth Amendment, and the higher authority of it's district court of appeals to grant the motion for a new trial where the court of appeals found the new evidence to be newly discovered leaving the trial court to consider if the appellant was unavoidably prevented from discovering the facts, and once came to the conclusion in the affirmative; the trial court should have granted the motion for a new trial. The trial court had no authority to rule that there was no newly discovered evidence; such predication is a manifest miscarriage of justice. This is contrary to the decision in the court of appeals in **State v. Blalock**, 2014-Ohio-934. And of this court in **Lawrence v. Chater** 516 U.S.163. And does not respect the role of the Supreme Court of Ohio in **Nolan v. Nolan**, 11 Ohio St. 3d 1, 462 N.E. 2d 410 (1984).

Respectfully submitted,



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SERVICE

The foregoing ***Petition For a Writ Of Certiorari*** has been sent by U.S. Mail Postage Pre-Paid to The United States Supreme Court on this 18th day of JUNE, 2018.

Respectfully Submitted,

Marcus Blalock

Marcus Blalock, Pro Se litigant