

18-9650

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUN 11 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SHAWN PINSON

(Your Name)

— PETITIONER

vs.

STATE OF TEXAS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shawn Pinson TDCJ # 02109680

(Your Name)

12071 Fm 3522

(Address)

Abilene, Texas 79601

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

When the State knowingly used false testimony, that was known to be false prior to trial, to obtain a conviction, were Petitioner's Due-Process rights under the Fourteenth Amendment of the United States Constitution violated where the State knew this witness never contacted the police as he claimed? If the jury had known the false nature of this testimony was there a reasonable probability that the jury would have also called into question his credibility concerning his testimony that Petitioner made a confession to him as well.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Shawn Pinson
TDCJ # 2109680
French M. Robertson Unit
12071 Fm 3522
Abilene, Texas 79601

Respondent's Counsel on Appeal:
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Assistant District Attorney
300 N. Grant Ave., Room 305
Odessa, Texas 79761

Petitioner's Trial Counsel:
Matt L. Thomas
Attorney at Law
319 Grant Ave.
Odessa, Texas 79761

Trial Court:
The Honorable John W. Smith
161st District Court, Ector
County, Texas

Petitioner's Counsel on Appeal:
M. Michele Green
Attorney at Law
2833 Wildwood Ave.
Odessa, Texas 79761

Appellate Court:
Chief Justice John M. Bailey,
Senior Chief Justice Jim. R.
Wright, (Retired) and Judge
Rodney Satterwhite (sitting
by assignment), Court of
Appeals, Eleventh District of
Texas.

Respondent: State of Texas

Respondent's Trial Counsel:
Melissa Williams,
Amanda Navarette
Assistant District Attorneys
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Review:
Texas Court of ~~Criminal~~
Criminal Appeals

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the 11th Court of Appeals, Eastland, Texas court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 17, 2019.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, United States Constitution

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor ~~deprive~~ deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioner was indicted on one count of murder. (CR 1:7-8). After a five-day jury trial, Petitioner was found guilty of murder and sentenced to seventy years in the Institutional Division of the Texas Department of Criminal Justice. (CR 1:72, 77, 109-12; RR 10:47; 11:98).

STATEMENT OF PROCEDURAL HISTORY

On December 21, 2018, the Eastland Court of Appeals affirmed Petitioner's murder conviction and seventy year prison sentence. *Pinson v. State*, No. 11-17-00003-CR, 2018 Tex.App. Lexis 10710, 44 (Tex.App.-Eastland, delivered Dec. 21, 2018)(mem.op.)(not designated for publication). (Appendix A). The Honorable Chief Justice John M. Bailey, Senior Chief Justice Jim R. Wright, and Judge Rodney W. Satterwhite participated in the decision of the Eastland Court of Appeals, with Senior Chief Justice Jim R. Wright authoring the opinion of the court.

Petitioner did not file a Motion for Rehearing with the Eastland Court of Appeals. His Petition for Discretionary Review was filed on Feb. 21, 2019. The Texas Court of Criminal Appeals refused his Petition for Discretionary Review on April 17, 2019. This Writ of Certiorari is due to be filed on or before July 16, 2019; therefore it is timely filed.

STATEMENT OF FACTS

On October 24, 2014, the police discovered a dead body in Petitioner's home that was located in Ector County, Texas. (RR 6:30-31, 35-36). Law enforcement officials found the body lying on Petitioner's living room floor, wrapped up in towels, and covered by a blanket. (RR. 6:35;

8:51). The body was positioned face down, with the arms and legs tied behind the back in a hog-tied position. (RR 6:62-63; 7:15; 8:21; SX #171).

Based on the state of decomposition, it appeared the body had been there for several days. (RR 6:36, 63). Utilizing fingerprints, the body was identified as that of Daniel Searcy, ("Searcy"). (RR 7:137). Searcy had been missing for several days when the police discovered his body at Petitioner's home. (RR 8:177-78; 9:20).

Petitioner was not at home at the time the police discovered Searcy's body. (RR 6:36). Petitioner had been arrested on October 23, 2014, on an unrelated criminal charge, and Petitioner was actually in jail at the time the police found Searcy's body lying on his living room floor. (RR 4:15-16).

An autopsy of Searcy's body was conducted on October 27, 2014. (RR 7:111; 12: SX #188). Due to the decomposition of Searcy's body, the medical examiner could not identify any external injuries on Searcy's body, and she could not determine the exact time Searcy died. (RR 7:114, 128-29). However, the medical examiner was able to determine that Searcy had a recent skull fracture on his right temple, several broken ribs, and a fracture in a neck bone. (RR 7:123-27, 133). The medical examiner determined Searcy died as a result of blunt force injuries. (RR 7:133; 12: SX #188). The medical examiner also concluded Searcy's death was a homicide. (Id.). At trial, the medical examiner testified that Searcy's head and rib injuries were consistent with being stomped and kicked. (RR 7:

136-37).

Within three days of discovering Searcy's body, the police charged Petitioner with Searcy's murder. (CR 1:6). Approximately two years later, a week long jury trial was held. (RR 1:1; 11:1). In the guilt / innocence phase of the jury trial, twenty witnesses testified during the State's case-in-chief. (RR 6:3; 7:3; 8:3; 9:3). Petitioner elected not to testify on his own behalf. (RR 9:114).

The jury charge included an instruction on the law of parties, as well as instructions on the lesser included offenses of manslaughter and criminally negligent homicide. (CR 1:64-65). The jurors returned a verdict finding Petitioner guilty of murder. (CR 1:72; RR 10:47).

SUMMARY OF THE ARGUMENT

Petitioner discovered soon after the jury trial that the State had used false testimony to secure his murder conviction. Such false testimony was given by the State's key witness against him.

ARGUMENT AND AUTHORITIES

Question Presented:

When the State knowingly used false testimony, that was known to be false prior to trial, to obtain a conviction, were Petitioner's Due-Process rights under the Fourteenth Amendment of the United States Constitution violated where the State knew this witness never contacted the police as he claimed? If the jury had known the false nature of this testimony is there a reasonable probability that the jury would have also called into question his credibility concerning his testimony that Petitioner made a confession to him as well, thus changing the outcome of his trial?

A. Due Process Violation.

"A conviction procured through the use of false testimony is a denial of the due process guaranteed by the Federal Constitution." Ex parte Ghahremani, 332 S.W. 3d 470, 477 (Tex. Crim. App. 2011) (citing Mooney v. Holohan, 294 U.S. 103, 112-13, 55 S.Ct. 340, 79 L.Ed. 2d 791 (1935)).

A defendant is therefore entitled to a new trial based on the State's use of false testimony when:

- (1) the State "used" the testimony;
- (2) the testimony was "false";
- (3) the testimony was "knowingly used"; and
- (4) there is a reasonable likelihood that the false testimony could have affected the judgment of the jury.

Espinosa v. State, 328 S.W. 3d 32, 38 (Tex. App. - Corpus Christi 2010, pet. ref'd).

B. Prosecutor's Constitutional Duty.

A due process violation may arise not only through false testimony specifically elicited by the State, but also by the State's failure to correct testimony it knows to be false. Ex parte Ghahremani, 332 S.W. 3d at 477. Indeed, Prosecutors have a constitutional duty to correct known false testimony. Duggan v. State, 778 S.W. 2d 465, 468 (Tex. Crim. App. 1989). The State violates a defendant's due process rights when it actively or passively uses perjured testimony to obtain a conviction. Ex parte Castellano, 863 S.W. 2d 476, 481 (Tex. Crim. App. 1993); Mooney v. Holohan, 294 U.S. at 112; Alcorta v. Texas, 355 U.S. 28, 31, 78 S.Ct. 103, 105, 2 L.Ed. 2d. 9 (1957).

It is also of no consequence that the facts pointed to may support only knowledge of the

police because such knowledge will be imputed to state prosecutors. Giglio v. U.S., 405 U.S. 150, 154, 92 S.Ct. 713, 716, 31 L.Ed.2d 104 (1972).

C. Material False Testimony.

It is established that a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment... The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959). A Napue violation may occur ~~may~~ not only when the prosecuting attorney knows that a witness's testimony is false, but also when another government attorney knows of the false testimony and does nothing to correct it. See Giglio v. U.S. 405 U.S. at 153. False testimony for these purposes includes testimony that affects only the credibility of a witness. Napue, 360 U.S. at 269-70. Thus, the grant of a new trial based upon a Napue violation is proper only if (1) the statements in question are shown to be actually false; (2) the prosecution knew they were false; and (3) the statements were material.

The Supreme Court defined materiality in terms of a "reasonable probability" of a different outcome. Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995). Such a reasonable probability results when nondisclosure places the case in a different light so as to undermine confidence in the verdict. *Id.* at 435. The relevant inquiry examines the challenged evidence collectively, not on an item-by-item basis. *Id.* at 436. "To say that an error did not contribute to the verdict is,

rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." Yates v. Evatt, 500 U.S. 391, 403, 111 S.Ct. 1884, 1893, 114 L.Ed.2d 432 (1991).

Materiality, stated another way, occurs when the falsehood results in "a corruption of the truth-seeking function of the trial process." United States v. Agurs, 427 U.S. 97, 104 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976).

D. The False Testimony.

1. Neatherlin's Questionable Background.

The testimony of Paul Charles Neatherlin, Jr., ("Neatherlin"), was the crux of the State's murder charges against Petitioner. Neatherlin worked on Petitioner's casing crew, (RR 9:71-72). In October of 2014, Neatherlin was a drug addict who used both cocaine and methamphetamine. (RR 9:72, 93). On the day of trial, Neatherlin was residing in a rehabilitation facility and attempting to address his "meth" addiction. (RR 9:69, 99).

Neatherlin had recently been arrested on four felony charges --- (1) possession of a controlled substance; (2) fraudulent use or possession of identifying information; (3) burglary of a building; and (4) unauthorized use of a motor vehicle. (RR 9:69-70, 98). All four felony charges were still pending against him on the day of trial. (Id.). Thus, the State's murder case against Petitioner hinged on the testimony of a criminal drug addict.

2. Neatherlin's Contradicted Testimony.

In regards to Searcy's death, Neatherlin testified he was not at Petitioner's home from October 17, 2014, through October 19, 2014. (RR 9:74). Rather, Neatherlin testified he first stopped by Petitioner's home on Monday, October 20, 2014 or Tuesday, October 21, 2014. (RR 9:74-75, 76). In contrast, another witness who actually knew Neatherlin testified that she saw Neatherlin in Petitioner's home of Saturday night, October 18, 2014. (RR 9:31).

3. Petitioner's Alleged Confession.

Neatherlin also testified that he stopped by Petitioner's home on Wednesday, October 23, 2014. (RR 9:83-84). During this particular visit, Neatherlin testified Petitioner started crying, he unlocked the door to his home, and he took Neatherlin inside. (RR 9:84-85). Neatherlin walked into the living room, smelled a terrible odor, and saw a black blanket under which appeared to be a body. (RR 9:85).

Neatherlin testified Petitioner told him there was a dead body under the blanket. (Id.). Neatherlin asked Petitioner, "did you do it?" (RR 9:86). Neatherlin testified that Petitioner responded and said, "I didn't mean to do it, I didn't mean to do it like that." (Id.). Neatherlin then asked Petitioner, "man, did you kill him or what?" (Id.). Neatherlin testified that Petitioner responded, "I killed him, but I didn't do what they did in there. Mexicans are crazy." (Id.).

4. Neatherlin's False Testimony

Neatherlin immediately left Petitioner's house and drove over to Marissa Johnson's

house. (RR 9:87). Marissa Johnson was Neatherlin's girlfriend at the time. (Id.). Paige Griffis was at Marissa Johnson's house when Neatherlin arrived. (RR 9:87-88). Paige Griffis was the daughter of Deputy Mike Griffis, ("Deputy Griffis"), who was employed as a deputy by Ector County Sheriff's Department. (CR 1:107; RR 9:88, 102). Neatherlin testified that Paige Griffis was his and Marissa Johnson's "best friend." (RR 9:88). Deputy Griffis lived across the street from Marissa Johnson, and Neatherlin testified he had known Deputy Griffis "for awhile" (RR 9:88).

Neatherlin testified he told both Marissa Johnson and Paige Griffis about the dead body and what Petitioner had said to him. (RR 9:87-88). Paige Griffis suggested that they call Deputy Griffis on his cell phone, and Neatherlin testified he told her that was a "good idea." (RR 9:88). Consequently, Paige Griffis called Deputy Griffis on his cell phone, and Neatherlin spoke to Deputy Griffis over the phone. (Id.).

Neatherlin testified he informed Deputy Griffis during this telephone call all about what he had seen and heard at Petitioner's home. (RR 9:96-97). When cross-examined about whether he had called the police and reported having seen a dead body in Petitioner's home, Neatherlin emphatically testified he did call the police because he called and reported the dead body to Deputy Griffis. (RR 9:102). If Neatherlin's testimony had been true, Deputy Griffis was the first law enforcement official to be placed on notice of the existence and location of Searcy's body.

E. The Affidavit Of Deputy Mike Griffis.

In his affidavit, Deputy Griffis denied Neatherlin ever reported a dead body to him. (CR

1:107)(Appendix 3). In fact, Deputy Griffis denied ever receiving a telephone call from Neatherlin during the time period covering October 19, 2014 through October 24, 2014. (Id.). Deputy Griffis stated in his affidavit that if he had have received a report of a dead body, he would have immediately sent officers out to the scene, and he would have personally gone out to the scene to investigate. (Id.).

F. Petitioner's Initial Notice.

In this case, Petitioner's counsel was first placed on notice of Neatherlin's alleged telephone call to Deputy Griffis during the guilt /innocence phase of the jury trial. In an affidavit attached to a Motion for New Trial, Petitioner's trial counsel, Matt Thomas, ("Thomas"), stated that during a conference outside the presence of the jury, and prior to Neatherlin's testimony, the prosecutor informed the trial court Neatherlin was expected to testify that he had called Deputy Griffis and informed Deputy Griffis of Searcy's dead body in Petitioner's home. (CR 1:101-02).

Prior to this bench conference, Deputy Griffis's name had never been mentioned during the trial. Although the State listed ninety-four potential trial witnesses - including Neatherlin and Marissa Johnson - on its First Amended Witness List filed prior to trial, the State failed to include either Deputy Griffis or Paige Griffis on this list. (CR 1:47-50).

The Reporter's Record reveals that the prosecutor interviewed Neatherlin while he was incarcerated in the Midland County Jail and prior to the jury trial. (RR 9:70). The bench conference discussed above established the State knew prior to trial, and prior to Neatherlin taking the witness

stand, that Neatherlin would testify he had reported Searcy's dead body and the location of the body to Deputy Griffis on October 24, 2014.

G. The Prosecutor's Imputed Knowledge.

Deputy Griffis's statements included in the Affidavit establish the falsehood of Neatherlin's trial testimony. Whether the prosecutor actually knew Neatherlin lied about reporting Searcy's dead body to Deputy Griffis on October 24, 2014 is immaterial. In certain circumstances, knowledge of perjured testimony may be imputed to a prosecutor who lacks actual knowledge of the falsity. Giglio v. U.S., 405 U.S. at 154. For purposes of imputed knowledge to the prosecution, courts have "declined to draw a distinction between different agencies under the same government, focussing instead upon the 'prosecution team' which includes both investigative and prosecutorial personnel." United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979). Thus, Deputy Griffis's knowledge of Neatherlin's perjured testimony was imputed to the prosecutor. Additionally, once the prosecutor learned of the alleged telephone call between Neatherlin and Deputy Griffis during her pretrial interview with Neatherlin, it was her duty to make an attempt to confirm this telephone call with Deputy Griffis.

If she had contacted Deputy Griffis, the prosecutor would have known Neatherlin was lying to the jurors about reporting Searcy's dead body to the police. Notwithstanding the prosecutor's inexplicable knowledge in this regard, the prosecutor had to recognize the misleading nature of Neatherlin's testimony based on the testimonies of prior law enforcement officials during the jury

trial.

H. The Materiality of The Evidence.

It does not matter that Neatherlin's false testimony went merely to the issue of Neatherlin's credibility. See Napue, 360 U.S. at 269. In this case, Petitioner's life and liberty depended on Neatherlin's credibility. Neatherlin was the most critical witness for the State in this murder case. Neatherlin, the State's star witness, provided the only direct evidence introduced during the jury trial that stated that Petitioner intentionally or knowingly committed the murder. If the jury did not believe the testimony of the State's star witness, the State could not meet its burden of proof in this case. Thus, this witness's credibility before the jury was of crucial importance in the State's case against Petitioner.

It did not matter that the false testimony in this case went merely to the issue of the credibility of the State's star witness. See Napue, 360 U.S. at 269. Likewise, it did not matter that the false testimony involved only the actions of the State's star witness directly after the murder.

What mattered was whether this false testimony influenced the jury to believe the State's star witness was more likely telling the truth. What mattered was whether there was a reasonable probability that knowledge of the State's star witness's false testimony would have impacted the jury's estimate of his credibility. The answer to both of those questions is a resounding "yes."

In closing arguments, the prosecutor told the jury that Neatherlin, their star witness, had

done "the right thing" when he called the law enforcement officer and reported what he had seen. (RR 10:50). With this closing argument, the prosecutor implicitly asserted the jury should believe the State's star witness when he testified that Petitioner had confessed to him.

If the jurors had known that the State's star witness had lied to them about contacting the police after the murder, there is a reasonable probability that the jurors would have believed that the State's star witness had lied to them about Petitioner's alleged confession. If the jurors doubted the credibility of the State's star witness, there is a reasonable probability that they would have returned a "not guilty" verdict.

Petitioner's life and liberty therefore depended on the credibility of the State's star witness. Since Neatherlin's testimony must be looked at collectively, rather than on an item-by-item basis, see Kyles, 514 U.S. at 436, to say that this false testimony did not contribute to the verdict, this Court would have to find this false testimony unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record. See Yates, 500 U.S. at 403.

It is an absolute fact that the jury had no idea how much of what the State's star witness testified to was true. Considered in this light, any false testimony, which was verifiably false was relevant, because it was solely upon his credibility, unverifiable by any other means, that the jury was expected to believe that Petitioner had confessed - to no one but Neatherlin - that it was he who killed Searcy.

For this reason, any lie told by the State's star witness was material.

REASONS FOR GRANTING THE PETITION

In this particular case, the preponderance of evidence shows that the State, more likely than not, knew the false nature of Neatherlin's testimony, and made every attempt to intentionally conceal this information from the defense as well as the jury. The State hid the names of Deputy Griffiths and Paige Griffiths from the defense all the way up until Neatherlin was to take the stand.

It is long standing law that the intentional use of false testimony violates the Due-Process Clause of the Fourteenth Amendment. Now this Honorable Court has the opportunity to decide, once and for all, that when a conviction relies upon the credibility of a liar, whom the State obviously knows to be a liar, all lies will be considered material and prosecutors will be held to this standard to prevent such antics in future prosecutions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shawn Pinson

Date: June 2, 2019

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHAWN PINSON

(Your Name)

— PETITIONER

VS.

STATE OF TEXAS

— RESPONDENT(S)

PROOF OF SERVICE

I, Shawn Pinson, do swear or declare that on this date,
June 2, 2019, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 2, 2019

Shawn Pinson

(Signature)

~~APPENDIX A~~