

19-7571

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JAN 22 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD L. WILLIAMS — PETITIONER
(Your Name)

vs.

TONY MAYS, WARDEN. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE TENNESSEE SUPREME COURT AT NASHVILLE

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

PETITION FOR WRIT OF CERTIORARI

RICHARD L. WILLIAMS, (374596)
(Your Name)

7475 Cockrill bend BLVD.
(Address)

Nashville, Tennessee 73209
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether, as applied to the facts of this case, the statutory presumption if a body of a murder victim found within the state, the death is presumed to have occurred within the state---comport with the constitutional standard articulated in COUNTY COURT OF ULSTER COUNTY, N.Y. v. ALLEN, 442 U.S. 140, 99 S.Ct. 2213, 60 L.ED. 2d 777 (2013)?

Whether the application of said statutory presumption to the fact of Appellant's case comport with the articulated in LEARY V. United States, 395 U.S. 6, 89 Ct. 1532, 23 Ld. 2d 57 (1969)?

LIST OF PARTIES

- [x] 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:

RELATED CASES

Edge v. State, 99 S.W. 1098 (Tenn. 1907).

Reynolds v. State, 287 S.W.2d 15, 16, (1956)

State v. Young, 196 S.W.3d 85 (2006)

Cagle v. State, 507 S.W.2d 121, 130-31 (Tenn. Crim. App. 1973)

County Court of Ulster County, N.Y. v. Allen, 442 U.S. 140, 99 S.Ct.

2213, 60 L.Ed.2d 777 (2013)

Leary v. United States, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed. 2d 571 (1969).

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OTHER

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☐ is unpublished.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☐ is unpublished.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 Denied TENNESSEE SUPREME COURT 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 12/05/19.
A copy of that decision appears at Appendix A.

☐ 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

The Fifth Amendment to the United States constitution, provides in part, That "(NO) person shall...be deprived of life, liberty, or property, without due process of law. Which is applicable to the states through the Fourteenth Amendment.

The Fourteenth Amendment in part, THAT "(NO)" state shall deprive and person of life, liberty, or property, without due process of the law.

THE REASON THE COVICTION SHOULD BE REVIEWED

This case should be reviewed because:

a) The defendant was *denied* his constitutional right to have pivotal exculpatory evidence that would have established his innocence presented by competent effective assistance of counsel at or before his trial, and at all subsequent stages of appeal and post-conviction avenues for relief.

b) The denial to have defendant's competent, relevant, and material *alibi* evidence presented at any of these stages, above, resulted in *fatal* prejudice, resulting in a wrongful conviction, and no relief due to failure of counsels to, yet again, fail to investigate and obtain the "new evidence" of this petitioner's innocence (alibi) which will be addressed, below.

Richard Williams had the following issues were as followed:

Ineffective assistance of counsel in violation of Fifth, Sixth, and Fourteenth Amendment rights and Article 1, Section 8 and 9 of the Constitution of the State of Tennessee.

Richard Williams had favorable evidence "suppressed" by the court, the prosecution, and his own defense counsels. "The Favorable evidence could be taken to put the whole case in such a different light as to undermine confidence in the verdict." "Review of suppressed evidence cumulatively in light of entire record." "Defendant's failure to request favorable evidence does not leave government free of all obligations to disclose such evidence to defendant, under BRADY. U.S.C.A. Const. AMENDS. 5, 14.

"Although constitutional duty of government to disclose favorable evidence to defendant is triggered by potential impact of favorable but undisclosed. Showing of "materiality" as required under BRADY dose not require demonstration by preponderance that disclosure of suppressed evidence would have resulted ultimately in defendant's acquittal; touchtone of materiality is

"Reasonable probability" of different result."

U.S.C.A. Const. AMENDS. 5,14.

"Materiality and probable effect of information in general in whether evidence that government failed to disclose to defendant satisfied "materiality" test of BRADY, question is not whether defendant would more likely than not have received "FAIR TRIAL," understood as a trial resulting in verdict worthy of confidence, "reasonable probability" of different result is accordingly shown when government's evidentiary suppression undermines confident in

U.S.C.A. Const. Amends. 5,14.

In the third prominent case on the way to current BRADY law, United States V. Bagley, 473 U.S. 667, 105 S.Ct. 3375, L.ED.2d 481 (1985), the Court disavowed ANY DIFFERENCE between exculpatory and impeachment evidence for BADY PURPOSES, AND IT ABANDONED THE DISTINCTION BETWEEN THE SECOND AND THIRD AGURS CIRCUMSTANCE, I.E., THE "SPECIFIC-REQUEST" and GENERAL- or NO-REQUEST" SITUATIONS. BAGLEY held that regardless of request, FAVORABLE EVIDENCE IS MATERIAL, AND constitutional error results FROM ITS SUPPRESSION BY GOVERNMENT, "IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO DEFENSE, THE RESULT OF THE ROCEEDING WOULD HAVE BEEN DIFFERENT." *434 473 U.S., at 682, 105 S.Ct., at 3383 (Opinion of Blackmun, J.) Id., at 685, 105 S.Ct., at 3385 (White, J., concurring in part and concurring in judgment).

STATEMENT OF THE CASE

On April 5, 2004, the Appellant pleaded guilty to and was convicted of second degree murder. He received an agreed-upon sentence of twenty-five years to be served in the Tennessee Department of Correction. On February 23, 2005, Appellant filed a pro se petition for post-conviction relief. The post-conviction was denied at the trial court level and on November 16, 2011 the Tennessee Court of Criminal Appeals at Nashville affirmed the judgment of the post-conviction court. *Richard L. Williams v. State of Tennessee*, 2011 WL 5578985 (November 16, 2011). Application for permission to appeal was denied by the Tennessee Supreme Court on February 17, 2012. On May 29, 2008, Appellant filed his first petition for writ of habeas corpus asserting that his sentence was illegal and void because he received the ineffective assistance of counsel prior to his entering a guilty plea. The trial court summarily dismissed the petition as having no merit. On March 20, 2009, the trial court's summary dismissal of the first petition for writ of habeas corpus relief was affirmed on first tier direct appeal. No appeal to the Tennessee Supreme Court was accomplished. SEE TR. 11-12 for a copy of this court's decision. On August 17, 2018, Appellant filed his second petition for writ of habeas corpus (TR. 13-48), and on October 8, 2018, the court summarily dismissed the second petition for writ of habeas corpus. TR. 49-50. On October 30, 2018, Appellant filed a timely notice of appeal from the summary dismissal of the second petition for writ of habeas corpus. TR. 51-52. On November 13, 2018, Appellant filed a timely description and designation of the record on appeal. Appellant filed, in the court a timely motion for extension of time

time in which to file the appellant brief and the court did give the appellant until January 22, 2019 to file the appellants brief in the Davidson County Criminal Courtoon October 8th, 2018. TR49-50. The Court of Criminal Appals affirmed the judgment of the habeas corpus court on July 10, 2019 and Petitioner Richard L. Williams did not file for rehearing. Exhibit 1 is a copy of the CCA's openion in this case. Under Rule 11 petitioner's filing deadline was Sept. 8, 2019. Because September 8th was a Sunday, the due date was Monday Sept. 9th and the application was filed on that date. The RULE 11 was denied on December 5th 2019.

REASONS FOR GRANTING THE PETITION

The primary reason supporting review by this Court is to challenge
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the Constitutionality of the lower Court's application of the State's jurisdiction statutes in deciding matters of territorial jurisdiction in Tennessee's murder cases. Citing to the state's jurisdiction statutes. (T.C.A. § 39-11-103), this Court has determined that, in a --.

prosecution for a murder, "there must be a presumption . . . , rebuttable in character, that the crime was committed where the body was found." *Reynolds v. State*, 287 S.W.2d 15, 16 (1956). Said statute explicitly precludes jurisdiction if the murder is both "commenced" and "consummated" outside of Tennessee. The word "commence" means to initiate formally by performing the first act. Consummated means to finish by completing what was intended. It follows that if a defendant wants to defeat jurisdiction, he generally must make *some showing* as to where the murder took place; that is, where the murder was commenced and consummated. Upon an adequate showing by the defendant, the predicate for a proceeding in the proper jurisdiction should be met.

Utilizing these guiding principles in deciding matters of territorial jurisdiction, Tennessee Courts have made conflicting "permissive presumptions" in violation of federal law as defined by the United States Supreme Court when faced with materially indistinguishable facts. Permissive presumptions should never, under any circumstance, be a substitute for requiring a finding of territorial jurisdiction *beyond a reasonable doubt*. In some instances, Tennessee Courts apply their own impression of what has occurred rather than relying on the facts *in the record* as a basis for determining territorial jurisdiction. Or even worse, the Courts import unproven facts into the record by way of said "permissive presumption" in order to establish territorial jurisdiction. A permissive presumption should never relieve the State of its burden of persuasion on matters of territorial jurisdiction.

In *State v. Young*, 196 S.W.3d 85 (Tenn. 2006), The victim's body was found in Fayette County, Tennessee and this Court determined that the, "State adduced sufficient proof for the jury to infer that [the d]efendant thereby committed an element of the offense of premeditated murder while still in Shelby County." *Id.* at 102-03. In *Young*, the evidence *in the record* establishes that the defendant may have premeditated the murder of the victim in Fayette County. The reasoning of this Court concluded that, "The victim's contact with him added to the risk of his capture if she was allowed to speak with anyone. It was reasonable for the jury to infer that, at the time Defendant determined to keep the victim with him in the car, he determined to kill her." *Id.* at 102-03. Under the facts found by this Court in *Young*, there *is* a rational way the jury could make the connection permitted by the inference.

In *Cagle v. State*, 507 S.W.2d 121, 130-31(Tenn.Crim.App. 1973), The TCCA determined that although the victim's body was found in Jefferson County, the evil premeditation took place in the defendant's mind in Hamblen County, thus the record leaves no room for doubt that part, if not all of the crime, was committed in Hamblen County. In *Cagle*, evidence was presented at trial that Cagle likely deliberately planned and executed the murder in the victim's basement in Hamblen County and the body was found later in Jefferson County. In *Cagle*, the victim's body was found in Jefferson County. Under the facts found by the TCCA in *Cagle*, the inference that the murder was committed *where the body was found*, was overcome by a preponderance of the evidence presented to the jury supporting that the murder, at least in part, was committed in Hamblen County.

In the instant Applicant's case, the facts which are extracted from the plea submission hearing transcript are that Appellant admitted to Detective Jeff West that there had been an altercation between him and the victim, Cassandra Williams, in Louisville, Kentucky. TR. 33. The plea submission hearing transcript indicates that the victim expired after Applicant pushed her down in Louisville, Kentucky and before he could take her to a hospital. TR 33-34, lines 21-9. The record below reflects that the victim's body was later found in Tennessee.

In the instant case, the TCCA applied their own impression of what has occurred rather than relying on the facts *in the record* as a basis for determining territorial jurisdiction. The TCCA's Opinion illogically concluded that, since the, "murder is committed upon the striking of the blow [in Kentucky] (that is the doing of the act by the defendant that leads to death), not the death itself," *Edge v. State*, 99 S.W. 1098 (Tenn. 1907), then "there must be a presumption...that the crime was committed where the body was found [in Tennessee]." *Reynolds v. State*, 287 S.W.2d 15, 16 (1956). As applied to the *facts* of this case, the presumption and findings of the TCCA wrongly concluded that *[since the body of the murder victim was found within the State of Tennessee, then the death is presumed to have occurred within the State of Tennessee]*. Under the facts presented, the reasoning of the TCCA does not comport with the constitutional standard articulated in *County Court of Ulster County, N.Y. v. Allen*, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777(2013). Under the facts of the Applicant's case, "there is no rational way the trier (plea submission hearing Court) could make the connection permitted by the inference. Further, the application of said presumption to the facts

of Applicant's case fails to comport with the standard articulated in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed. 2d 57 (1969). As applied to the facts of this case, the presumption that the crime was committed where the body was found is not rational. The argument against said presumption is predicated solely on the facts articulated at the plea submission hearing in the instant case. The outlined circumstances presented at the plea submission hearing made it highly improbable that the homicide took place in Tennessee. The undisputed evidence supports that the murder happened where the "blow" that caused the murder took place. See i.e. *Edge v. State*, 99 S.W. 1098 (Tenn. 1907). The application of said presumption to the facts found in this case therefore fails to comport with the standard laid down in the United States Supreme Court in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed. 2d 57 (1969), for there is no "rational connection" between the basic facts that the prosecution proved at the plea submission hearing and the ultimate fact presumed. The ultimate fact presumed (*the death is presumed to have occurred within the state*) is not "more likely than not to flow from" the evidence presented at the plea submission hearing.

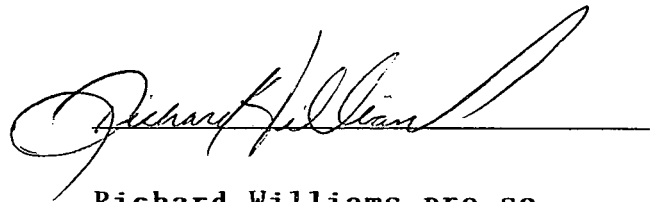
As outlined above, the TCCA Opinion below on the matter of territorial jurisdiction was contrary to and involved an unreasonable application of clearly established federal law as defined by the United States Supreme Court in *County Court of Ulster County, N.Y. v. Allen*, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777(2013) as well as in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed. 2d 57 (1969).

As outlined above, the TCCA Opinion below amounted to a decision that was an unreasonable determination of the fact in light of the evidence presented at the plea submission hearing.

VII. Relief Requested

Applicant, Richard Williams hereby moves this Honorable Court for an order send this case back to the lower Court for Application and allowing for the briefing of this matter as there is a need to secure uniformity of decision; need to secure settlement of great important questions of law and the need of settlement of questions of public interest; and the need for the exercise of the Supreme Court's supervisory authority in this matter.

Respectfully Submitted,



Richard Williams, pro se
TDOC 374596
Riverbend maximum Security
institution
7475 Cockrill Bend BLVD.
Nashville, Tennessee 37209

Certificate of Service

I, Richard Williams, hereby certify that a true and exact copy Application of APPELLANT Richard L. Williams for WRIT OF Certiorari has been sent via First Class mail, postage prepaid, to;

CLERK OF COURTS Scott S. Hassis
1st street NE, U.S. Supreme COURT BUILDING
WASHINGTON DC 20543

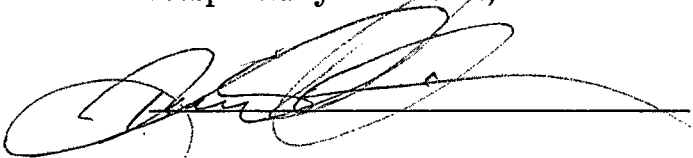
Conclusion

Wherefore, the aforementioned premises considered, Appellant moves this Honorable Court for an Order reversing the trial court's decision below, as the pleadings demonstrate an adequate record for summary review—including pertinent documents to support the factual assertions contained in the petition for writ of habeas corpus; and any other such relief as the Court deems appropriate and just.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. L. [unclear]", written over a horizontal line.

Date: January 14, 2020