

No. 19-8475

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

In re TARVARES JAMES WATSON - PETITIONER

ON PETITION FOR A WRIT OF HABEAS CORPUS
TO TEST THE LEGALITY OF PETITIONER'S
DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

Tarvares Watson, pro se

DC # J26050

568 N.E. 255th St.

Cross City, Florida 32628

Petitioner, pro se

QUESTIONS PRESENTED

- 1) WHETHER PETITIONER'S CONVICTIONS RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT?
- 2) WHETHER PETITIONER'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE UNDER THE 6th AND 14th AMENDMENTS FOR FAILING TO INVESTIGATE, INTERVIEW, AND CALL OFFICER G.M. NAGLE?
- 3) WHETHER THERE IS A REASONABLE POSSIBILITY THAT THE PETITIONER'S CONVICTION IS BASED ON FALSE TESTIMONY?

LIST OF PARTIES

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:

- 1) The Petitioner, Tarvares Watson DC # J26050, proceeding pro se, who is currently confined at Cross City Correctional Institute, 568 NE 255th Street, Cross City, Florida 32628;
- 2) Sharon S. Traxler, Assistant Attorney General, Florida Bar No. 0558621, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050;
- 3) Attorney General of the State of Florida, Ashley Moody (address same)

RELATED CASES

• Watson v. State, 1D08-1439, District Court of Appeal, First District of Florida. Judgment entered August 20, 2009.

• Watson v. State, 1D10-3114, District Court of Appeal, First District of Florida. Judgment entered August 5, 2010.

• Watson v. State, 1D10-5108, District Court of Appeal, First District of Florida. Judgment entered December 8, 2010.

RELATED CASES cont'd

- Watson v. Florida, Docket # 10-9337, Supreme Court of the United States. Judgment entered May 16, 2011.
- Watson v. State, 1013-1058, District Court of Appeal, First District of Florida. Judgment entered May 28, 2013.
- Watson v. Florida, Docket # 13-5962, Supreme Court of the United States. Judgment entered October 7, 2013.
- Watson v. Secretary of the Florida Department of Corrections, 3:13-cv-1570-J-39JBT, U.S. District Court of the Middle District of Florida, Jacksonville Division. Judgment entered August 29, 2016.
- Watson v. Secretary of the Florida Department of Corrections, 16-16774-A, U.S. Court of Appeals for the 11th Circuit. Judgment entered January 23, 2017.
- Watson v. Florida, Docket # 16-9408, Supreme Court of the United States. Judgment entered October 2, 2017.
- Watson v. Secretary of the Florida Department of Corrections, 3:13-cv-1570-J-39JBT, U.S. District Court of the Middle District of Florida, Jacksonville Division. Judgment entered September 25, 2017.

RELATED CASES cont'd

- Watson v. Secretary of the Florida Department of Corrections, 18-10863-H, U.S. Court of Appeals for the 11th Circuit. Judgment entered May 22, 2018.

- Watson v. Secretary of the Florida Department of Corrections, Docket # 18-6400, Supreme Court of the United States. Judgment entered December 10, 2018.

CORPORATE DISCLOSURE STATEMENT

Petitioner is unaware of any parent corporations or publicly held company owning 10% or more of any corporation's stock.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue in this case.

OPINIONS BELOW

Petitioner's cases in federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at N/A.

The opinion of the United States district court appears at Appendix B to the petition and is reported at Watson v. Secretary of the Florida Department of Corrections, 2016 U.S. Dist. LEXIS 115425, (M.D. Fla. August 29, 2016).

Petitioner's cases in state courts:

The opinion of the highest state court to review the merits of Petitioner's first motion for postconviction relief appears at Appendix C to the petition and is reported at Watson v. State, 51 So. 3d 467 (Fla. App. 1st Dist. 2010).

The opinion of the state postconviction court appears at Appendix E, p. 49-100, to the petition and is unpublished.

The opinion of the highest state court to review the merits of Petitioner's motion for postconviction relief based on newly discovered evidence

OPINIONS BELOW cont'd

appears at Appendix D to the petition and is unpublished.

The opinion of the state postconviction court appears at Appendix E to the petition and is unpublished.

JURISDICTION

Petitioner's case in federal courts:

The date on which the United States court of appeals decided my case was January 23, 2017.

A timely petition for rehearing was denied by the United States court of appeals on the following date: March 22, 2017, and a copy of the order denying rehearing appears at Appendix F.

Petitioner's cases in state courts:

The date on which the highest state court decided Petitioner's appeal of the first motion for postconviction relief was December 8, 2010.

A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: January 14, 2011, and a copy of the order denying rehearing appears at Appendix H.

The date on which the highest state court decided Petitioner's appeal of the motion for postconviction relief based on newly discovered

JURISDICTION cont'd

evidence was October 17, 2019. A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on the following dates: December 9, 2019, and January 16, 2020, and a copy of the orders denying rehearing appear at Appendices I and J.

The jurisdiction of this Court is invoked under 28 U.S.C. § 2254 (a) and Rule 20 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the U.S. Constitution
Sixth Amendment to the U.S. Constitution

STATEMENT OF THE CASE

On January 7th - 9th of 2008, the Petitioner was tried and convicted of first-degree premeditated murder, armed burglary with battery, and attempted first degree murder in a jury trial that was held in the Fourth Judicial Circuit Court, Duval County, Florida, case # 16-2006-CF-16774-AXXXMA. On February 7th, 2008, the Petitioner was sentenced to three (3) consecutive minimum mandatory "life" sentences to which the Petitioner is currently serving in the Florida Department of Corrections. On August 20th, 2009, the First District Court of Appeal of Florida per curiam affirmed the Petitioner's convictions and sentences in case # 1008-1439.

State Court Postconviction Proceeding

On May 28th, 2010, the Petitioner placed his first pro se Motion for Postconviction Relief (hereinafter "postconviction motion") (see App. P) in the hands of prison officials for U.S. mailing to the Fourth Judicial Circuit Court, Duval County, Florida (hereinafter "postconviction court") pursuant to Florida Rule of Criminal Procedure 3.850 (see App. M), case # 16-2006-CF-16774-AXXXMA. In said Motion, the Petitioner raised ten (10) grounds for relief, two (2) of which are relevant to the instant questions for review, i.e.,:

Ground One: Defendant was deprived of life and liberty by the prosecution's knowing use of perjured testimony in violation of Defendant's Fourteenth Amendment Right to Due Process

(Giglio violation*1) (see App. P, p. 3-10); and
Ground Three : Counsel was
ineffective for failing to impeach
the prosecution's Key witness with
"Material" evidence of prior
inconsistent statements violating
Defendant's Sixth and Fourteenth
Amendment Rights (see App. P, p. 15-24).

These two (2) claims revolve around the trial
court testimony of Christy Liggins, a witness for
the state. The Petitioner alleged that Christy
Liggins "testified that [the Petitioner] was the
alleged suspect, she saw on the night of July 14,
2005, toting an AK-47." (see App. P, p. 4). "she further
stated that the alleged suspects left the scene in a
gray sedan Pontiac type car." The "jury convicted
[the Petitioner], based on the false testimony."
(see App. P, p. 4). The Petitioner alleged that Christy
Liggins's testimony was false because :

Supplemental Report #6 reveals that on
7-14-2005, during Ms. Liggins' initial interview
with officer Nagle she described the second
alleged suspect as 6'2" and toting a
handgun. Ms. Liggins also stated that the
alleged suspects left the scene in a silver
Toyota Corolla (see App. P, p. 6).

"Supplemental Report #6 bears directly on her actual
statements made to police on July 14, 2005, which
reveals, contrary to her trial court testimony, that Ms.
Liggins never identified a suspect for police and
that Ms. Liggins told police that the second alleged
suspect was toting a handgun and that the alleged
suspects left the scene in a silver Toyota Corolla."

*1 Giglio v. U.S., 405 U.S 150 (1972)

(see App. P, p. 6).

The Petitioner supported this allegation by alleging that "a critical turning point" occurred in this case on "June 21, 2007" when Christy Liggins "provided statements regarding what she allegedly saw on July 14, 2005, for deposition purposes that are as follows:

Q: Can you describe the second person for me?

A: I can't really describe him. I mean, it happened so long ago that I couldn't really describe him to you.

....

Q: Okay. Do you remember -- when you say a gun, was it a handgun, a rifle, or do you know?

A: It looked like an AK-47 to me.

....

And when I came home from school the next day, the police was sitting out in front of the yard. And I had spoke with him and told the guy what I saw.

....

Q: Okay, now with respect to this individual was he bigger or smaller than the last -- the first one, or do you remember?

A: I don't remember that.

....

Q: Had you ever seen him before?

A: I'm -- I'm -- I think I have. I can't be certain. But like I said, that car's been over there before, and it's always been two guys that got out of that car.

I know that he was -- I'm pretty sure that he was one of the guys that I had seen before, but I cannot be certain. (see App. P, p. 5-6).

"Ms. Liggins' statements in the deposition transcripts and her statements to Officer Nagle transcribed in

Supplemental Report # 6 show that the prosecution's presentation of Ms. Liggins' in-court identification of [the Petitioner] allegedly being armed with an AK-47 and leaving the scene in a gray sedan Pontiac type car was false." (see App. P, p. 6).

In support of "GROUND THREE", the Petitioner alleged that his:

trial counsel failed to bring the witness' attention to the dates of July 14, 2005 and June 21, 2007. July 14, 2005 was the date in which Ms. Liggins was interviewed at the scene by Officer G.M. Nagle # 5731 and June 21, 2007, was the date in which the deposition of Christy Liggins commenced at 1 p.m. Counsel failed to make an inquiry into the witness' recollection of the events that took place on the above-mentioned dates - namely, Ms. Liggins' failure to provide Officer G.M. Nagle # 5731 with an identification of the alleged suspects and Ms. Liggins' failure to mention an AK-47 or gray sedan Pontiac type car to Officer Nagle during the interview, as well as Ms. Liggins being placed under oath by Alan Mizrahi and being deposed by W. Charles Fletcher [trial counsel] for deposition purposes in which Ms. Liggins gave oral statements inconsistent with her trial court testimony. (see App. P, p. 17).

On July 14th 2010, the state furnished the "STATE'S RESPONSE TO ORDER DIRECTING STATE ATTORNEY TO FILE A RESPONSE" (hereinafter "state's Response" (see App. E, p. 51-100). The state contended in relevant part that:

Grounds one (1), two (2) and three (3) generally allege the same error surrounding the testimony of an eye witness, Christy

Liggins. Defendant claims that Christy Liggins perjured herself when she identified Defendant in court, and Defendant cites Ms. Liggins testimony surrounding her inability to see the face of the injured individual fleeing the murder scene as evidence of this perjury. Defendant, in his own motion however, correctly points out that Ms. Liggins testified in deposition that she believed she had seen the injured individual previously at the apartment complex. Furthermore, DNA evidence confirms Ms. Liggins' identification. There is no legal requirement that a witness identify a person before trial, nor is there any case law to suggest that in court identifications are per se unduly suggestive and inadmissible absent a previous identification. Defense counsel thoroughly cross examined the Ms. Liggins about her ability to identify Defendant and nothing she testified to in trial was directly inconsistent with previous testimony. (see App. E, p. 52).

The postconviction court denied the Petitioner's claims in the postconviction motion "for the reasons set forth in the State's Response". (see App. E, p. 49). The Petitioner again appealed to the First District Court of Appeal of Florida in case # 1D10-5108. That court per curiam affirmed the postconviction court's denial. (see App. C). The Petitioner thereafter sought certiorari in this Court on February 28th, 2011, docket # 10-9337. This Court denied certiorari on May 16th, 2011, and denied rehearing on July 25th, 2011.

28 U.S.C. § 2254 Proceeding

On December 12th, 2013, the Petitioner placed a pro se "PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY "

(hereinafter "2254 Petition") (see App. R) in the hands of prison officials for U.S. mailing to the United States District Court, Middle District of Florida, Jacksonville Division (hereinafter "district court"), case # 3:13-cv-1570-BJD-JBT. The Petitioner raised five (5) grounds for relief therein, two (2) of which are relevant to the instant questions for review :

GROUND THREE : PETITIONER WAS DEPRIVED OF LIFE AND LIBERTY BY THE PROSECUTION'S KNOWING USE OF FALSE TESTIMONY IN VIOLATION OF PETITIONER'S FOURTEENTH AMENDMENT DUE PROCESS RIGHTS UNDER THE U.S. CONSTITUTION (GIGLIO VIOLATION) (see App. Q, p. 10-12); and

GROUND FOUR : TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO IMPEACH THE PROSECUTION'S KEY WITNESS WITH HER PRIOR INCONSISTENT STATEMENTS TRANSCRIBED IN SUPPLEMENTAL REPORT #6 AT PAGE 5, AND FOR COUNSEL'S FAILURE TO INVESTIGATE, INTERVIEW AND CALL THE PERSON TO WHOM THE STATEMENTS WERE MADE - OFFICER G. M. NAGLE IN VIOLATION OF PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS (see App. Q, p. 12-15).

The supporting facts of "GROUND THREE" are as follows :

On January 8th, 2008, the prosecution knowingly presented false testimony, during trial, when Christy Liggins testified that, on the night of July 14th, 2005, she told police that she saw Petitioner with an AK-47, leaving the scene in a Pontiac sedan.

This testimony is false, because officer G.M. Nagle's Supplemental Report # 6 at page 5 reveals, contrarily, that on the night of July 14th, 2005, Christy Liggins actually told police that the purported suspect was 6'2", toting a handgun, leaving the scene in a Toyota Corolla. [J] Supplemental Report # 6, page 5, further reveals that Christy Liggins never identified Petitioner as the alleged suspect on the night of July 14th, 2005.

Moreover, Christy Liggins provided testimony for deposition purposes, on June 21st, 2007, where she testified in regards to the night of July 14th, 2005, that she told police she could not see the alleged suspect's face because it was dark, and that she was uncertain in her ability to recognize the alleged suspect. The prosecution knew Christy Liggins testimony at trial was false ; (1) Because the knowledge of Officer Nagle who interviewed Christy Liggins on the night of July 14th, 2005, and who subsequently transcribed her statements in Supplemental Report # 6 at page 5 is imputed to the prosecution, and (2) because, on June 21st, 2007, the prosecution placed Christy Liggins under oath and was present the entire proceeding while Christy Liggins was deposed. (see App. Q, p.10)

The supporting facts of "GROUND FOUR" are as follows :

At trial, Christy Liggins testified that on July 14th 2005, she saw a guy, who appeared to be injured, run and get into the passenger side of a Pontiac sedan. She testified that the purported suspect had "a rifle in his hand, AK-47 in his hand." "It was more like an AK-47, big gun. It wasn't a small one." Christy Liggins identified Petitioner, during trial, as the purported suspect. She acknowledged that she recognized the suspect by "bodyshape and the car." Christy Liggins testified that she told police what she saw.

Trial counsel failed to lay a foundation under Florida Statute 90.614 and impeach Christy Liggins' testimony with her prior inconsistent statements transcribed in Supplemental Report #6 at page 5, and also with her transcribed deposition statements by calling the witness' attention to the time, place, and person to whom Christy Liggins' initial statements were made - the author of Supplemental Report #6 - Officer G.M. Nagle, who was available to testify. (see App. Q, p. 12-13).

On August 29th, 2016, the district court denied and dismissed the Petitioner's 2254 Petition with prejudice in a forty-one (41) page order and denied a certificate of appealability. (see App. B). With respect to "GROUND THREE" of the 2254 Petition, the district court, after stating the facts in the record summarized that the "Petitioner claims there has been a Giglio violation because Ms. Liggins' testimony at trial was not merely inconsistent with her prior statement to the police officer, but was an entirely different account of what she saw that morning." (see App. B, p. 26). After stating the pertinent laws for Giglio claims raised pursuant to 28 U.S.C. § 2254, the district court stated that "In this regard, Petitioner is challenging the state court's conclusion that Ms. Liggins did not provide false testimony." (see App. B, p. 28). After a brief statement of the facts the district court held that "To the extent Petitioner is asserting that the state court made an unreasonable factual finding when it found Liggins' testimony was not false, Petitioner has not shown that no reasonable jurist would agree with the state court's factual determination." (see App. B, p. 29):

Here, the state court factual finding was not "unreasonable" under 2254(d)(2). The circuit court did not apply an incorrect legal standard, as the court concluded that although Petitioner claimed Christy Liggins perjured herself at trial, the record showed that her testimony was not "directly inconsistent with previous testimony." [] By its ruling, in line with Supreme Court precedent, the circuit court determined there was no "deliberate deception of a court and jurors by the presentation of known false evidence []" Giglio, 405 U.S. at 153. The First District Court of Appeal affirmed this decision. []

Deference under AEDPA should be given to the state court's decision. Petitioner raised the issue in his Rule 3.850 motion and on appeal of the denial of the Rule 3.850 motion, and the appellate court affirmed. The state court's adjudication of this claim is not contrary to or an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Thus, Petitioner is not entitled to habeas relief on ground three. (see App. B, p. 29-30)

The district court went on to state that:

the circuit court pointed out that upon thorough cross examination by defense counsel "nothing she testified to in trial was directly inconsistent with previous testimony." [] Of note, her statement to the police officer was not sworn testimony and she testified at trial that she was unaware that the officer wrote down that she said that the injured suspect carried a handgun rather than rifle or AK-47. Upon review, her statement to the police officer was not directly inconsistent with both her deposition and trial testimony (two men fleeing, they enter a gray or

Silver car, the second man is injured and hunched over, and the second man carried a gun). (see App. B, p. 31).

After a brief introduction of "GROUND FOUR," and a statement explaining the pertinent law of Strickland v. Washington, 466 U.S. 668 (1984), the district court addressed "GROUND FOUR" of the 2254 Petition as follows:

As noted previously, the circuit court found that defense counsel thoroughly cross examined Ms. Liggins and held that "nothing she testified to was directly inconsistent with previous testimony." [] The record shows that defense counsel conducted a thorough examination of Ms. Liggins. [] She admitted that she could not see the second person when he got to the other side of the car. [] She stated that she could not see his face over the roof of the car. [] She agreed that her view of the person was a "quick shot." [] She testified it was dark outside, and she was not able to see the second suspect get into the car. [] (see App. B, p. 33).

On re-direct, Ms. Liggins testified that she provided her statement to the police officer outside, but the officer acted liked he was not paying attention or did not think her information mattered, but wrote it down anyway. [] On re-cross, defense counsel honed in on Liggins' statement provided to the police. [] Defense counsel asked Liggins if she watched the police officer write down the statement. [] Liggins said she could not see what the officer wrote down because he was in a car and she was standing outside of the vehicle. [] She said she saw the officer writing, but she could not see the content of the report. [] Defense counsel specifically asked her about the discrepancies in her descriptions of the gun. [] (see App. B, p. 33).

Pointedly, defense counsel asked the following question:

Q Did he ever indicate to you that you had said that you saw the person with a handgun and not an AK-47?

A No, he didn't say anything to me. He was like okay, I've got it all written down, thank you, and I walked away. (see App. B, p. 34)

[].

Based on the record, defense counsel was aware of the content of the police report, and he fully cross examined Ms. Liggins concerning the content of her statement to the police officer. Once Ms. Liggins said she had no idea what the police officer actually wrote down, any decision by counsel not to call Officer Nagle to testify about the report was a reasonable decision on the part of defense counsel. It was certainly made clear that the report said Ms. Liggins gave a statement which said she saw a handgun, but she testified in her deposition and at trial that she saw an AK-47. Also of import, she did not identify the Petitioner as the second suspect until she observed him at trial. (see App. B, p. 34).

In closing argument, defense counsel attacked Christy Liggins' trial testimony and in-court identification of Petitioner. [] Defense counsel effectively challenged her trial testimony by referencing Detective Stucki's testimony that the police did not find anyone who could identify the shooter. [] Defense counsel reiterated that the lead detective, with his "big, fat notebook" on the case, found no one who could identify the shooter during the police investigation. [] Defense counsel challenged the jury to consider the content of Liggins' testimony as not being believable by asking them to

consider the following: "[y]et Christy Liggins yesterday gets on the stand, she's been talked to by the police and she says she tells you that she hears gunshots, and two and a half years later, she is able to identify Mr. Watson in the courtroom, [] (see App. B, p. 34-35).

Petitioner has not shown that counsel's performance was outside the wide range of professional competence. Furthermore, Petitioner has not shown that a reasonable probability exists that the outcome of the proceeding would have been different if his lawyer had given the assistance that Petitioner has alleged should have been provided. Accordingly, Petitioner's ineffectiveness claim raised in ground four of the Petition is without merit since he has neither shown deficient performance nor resulting prejudice. (see App. B, p. 35).

Certificate of Appealability ("COA") proceeding

After the district court denied the 2254 Petition, the Petitioner placed a "MOTION FOR CERTIFICATE OF APPEALABILITY" (hereinafter "Motion for COA") (see App. A) in the hands of prison officials for U.S. mailing to the UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (hereinafter "11th Circuit") on October 11th, 2016. Petitioner raised three (3) issues in the Motion for COA, two (2) of which are relevant to the instant questions presented for review, i.e., :

ISSUE ONE: WHETHER PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS WAS DENIED BY THE PROSECUTION'S KNOWING USE OF, SUBSEQUENT FAILURE TO CORRECT, AND SUBSEQUENT EXPLOITATION OF FALSE TESTIMONY (see App. A, p. 4-9); and

ISSUE TWO: WHETHER PETITIONER'S 6TH AND 14TH AMENDMENT RIGHTS WERE DENIED BY TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE IN FAILING TO IMPEACH THE PROSECUTION'S KEY WITNESS WITH PRIOR INCONSISTENT STATEMENTS AND FOR FAILING TO INVESTIGATE, INTERVIEW, AND CALL THE PERSON TO WHOM SAID STATEMENTS WERE MADE (see App. R, p. 10-19).

As to Issue One, the Petitioner argued that "reasonable jurists would debate as to whether the prosecution's knowing use and subsequent exploitation of Christy Liggins's false testimony deliberately deceived 'the court and jurors' into unjustly finding direct evidence regarding the 'discharge of a firearm causing great bodily harm or death' element in each of the offenses." (see App. R, p. 6-7). The Petitioner argued that:

Reasonable jurists would further debate as to whether this issue should have been resolved differently and deserves encouragement to proceed further, because the district court in reviewing this issue failed to "focus on the impact on the jury." [] "It is [] immaterial whether the false testimony directly concerns an essential element of the government's proof or whether it bears only upon the credibility of the witness [....]" (t)he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." [] (see App. R, p. 7).

"Christy Liggins's false testimony essentially became the element of 'discharge of a firearm causing great bodily harm or death' in each of the offenses for which Petitioner's convictions currently stand, and that 'it is upon such subtle factors as the possible interest of the witness in testifying falsely' that Petitioner's life and liberty depends." (see App. B, p. 8).

Furthermore, reasonable jurists would find it debatable that this issue should have been resolved differently and deserves encouragement to proceed further because Officer G.M. Nagle's prospective testimony "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" by:

- Corroborating lead Detective Stucki's exculpatory testimony that there was never any witness to identify a shooter by providing specific details about Christy Liggins's initial interview with police before the jury;
- By presenting before the jury evidence of contradictory testimony concerning Petitioner's purported possession of the murder-weapon;
- And by corroborating the defense by bringing forth testimony that two armed gunmen - "a heavy, set black male with a short fade," and a 6'2" individual were in fact present at the scene. (see App. B, p. 9).

As to Issue Two, the Petitioner stated that:

On July 14, 2005 at 16:06, Officer G.M. Nagle interviewed Christy Liggins at the scene, and his Supplemental Report #6 at page 5 reveals contrarily that Christy Liggins

initially described the injured suspect as a 6'2" individual, toting a handgun, leaving the scene in a Toyota Corolla. [] Trial counsel failed to lay a proper foundation by quoting from and introducing extrinsic evidence that these prior inconsistent statements were in fact made. [] (see App. R, p. 10)

Reasonable jurists would debatably agree that trial counsel's failure precluded the jury from reading and considering the tangible extrinsic evidence of Supplemental Report #6 at page 5 during its deliberation and rendition of the verdicts. Reasonable jurists would also debatably agree that counsel's failure precluded the jury from having an opportunity to weigh the level of certainty in Officer Nagle's prospective testimony in contrast to the testimony of Christy Liggins. Furthermore, reasonable jurists would debatably agree that the jury was totally unaware of the existence of Officer G.M. Nagle and the substance of Supplemental Report #6, and thus reasonable jurists would debate as to whether the jury was aware or unaware that Christy Liggins had, indeed, made prior inconsistent statements regarding her "recognition" and murder weapon testimony. In light of all of the above, reasonable jurists would debate whether "petitioner has not shown that counsel's performance was outside the wide range of professional competence," [] (see App. R, p. 11).

[R]easonable jurists would debate that this issue should have been resolved differently and deserves encouragement to proceed further because the district court failed to consider that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." [] The Supreme Court has explained that "[i]n assessing counsel's investigation, we must conduct an objective review of their performance measured for 'reasonableness under

prevailing professional norms* which includes a context-dependent consideration of the challenged conduct as seen 'from counsel's perspective at the time.'" [] (see App. R, p. 16).

As such, on November 30, 2006, the state's Discovery Exhibit and Demand for Reciprocal Discovery was filed in this case, serving counsel with notice of the state's intent to call Christy Liggins as a witness for the state. [] At this point, any reasonable counsel would have reviewed any statements that were made to the police by this witness, especially where said statements were transcribed in a readily available police report. [] At the deposition proceeding, subsequently held on June 21, 2007, when it became apparent that Christy Liggins changed her statement from a mere handgun into the murder weapon the need to make an effective impeachment case by investigating, interviewing, and calling officer G.M. Nagle became essential to presenting a reasonable doubt in the minds of the jurors at the upcoming trial concerning the "discharge of a firearm causing great bodily harm or death element in each of the offenses for which Petitioner stood accused. [] (see App. R, p. 17).

Certiorari Proceeding

On January 23rd, 2017, the 11th Circuit denied Petitioner's Motion for COA. (see App. A). On May 25th, 2017, the Petitioner placed a "PETITION FOR WRIT OF CERTIORARI" (see App. S) in the hands of prison officials for U.S. mailing to the Supreme Court of the United States, docket # 16-9408. Three (3) questions were presented, two (2) of which are relevant to the instant questions presented for review:

QUESTION ONE: DID THE ELEVENTH CIRCUIT MISAPPLY 28 U.S.C. §2253 STANDARDS IN DETERMINING THAT PETITIONER "FAILED TO MAKE THE REQUISITE SHOWING" THAT REASONABLE JURISTS WOULD FIND DEBATABLE "THE MERITS" OF ISSUE WHERE THE DISTRICT COURT MADE CREDIBILITY DETERMINATIONS WITHOUT HEARING LIVE TESTIMONY FROM PRIMARY OFFICER, TENDING TO IMPEACH THE SOLE EYEWITNESS'S IDENTIFICATION BASED ON RECOGNITION OF SUSPECT'S FIREARM, BODYSHAPE, AND GETAWAY CAR, EVEN WHERE RESPONDENT ADMITS TO THE INCONSISTENCIES? (see App. S, p. i), and

QUESTION TWO: UNDER 28 U.S.C. §2254, CAN A DISTRICT COURT MAKE A THIRD-PARTY CREDIBILITY DETERMINATION BASED ON DOCUMENTARY EXCERPTS OF A WITNESS'S TRIAL TESTIMONY CONCERNING OUT-OF-COURT INTERVIEW WITH THIRD-PARTY WITNESS, WHERE THIRD-PARTY WITNESS HAS NEVER TESTIFIED IN ANY PRIOR COURT PROCEEDING AND SUPERVISORY REVIEW IS NECESSARY TO RESOLVE CONFLICTS AMONGST THE 4th, 5th, 9th, AND 11th CIRCUIT COURTS OF APPEAL?

The Petitioner presented supporting arguments in stating that:

The question presented by the circumstances of the instant case has inflicted much conflict and indecision in the abovementioned circuit courts of appeals's review of similar Habeas cases. What degree of credence that should be given, if any, to a district court's credibility determination, based on paper excerpts, where the state court has

not held an evidentiary hearing is an extremely indecisive subject which needs prevailing precedent established by this Court to administer uniformity in the circuit courts of appeal. (see App. S, p. 16)

Without holding an evidentiary hearing, the postconviction court denied this ground stating that "[d]efense counsel thoroughly cross examined the Ms. Liggins about her ability to identify [petitioner] and nothing she testified to in trial was directly inconsistent with previous testimony." []. The district court, subsequently thereafter upheld the postconviction court's ruling stating that "[u]pon review, her statement to the police officer was not directly inconsistent with both her deposition and trial testimony (two men fleeing they enter a gray or silver car, the second man is hunched over and the second man carried a gun)." []. In providing justification for the inconsistencies, the district court has deposited its own credibility determination for that of the jurors presiding over the trial who were precluded from making their own credibility determination in the absence of hearing live testimony from Officer Nagle. (see App. S, p. 17-18).

The district court's credibility determination is unreliable as it fails to consider and overlooks several key factors that must be considered in the context of the material elements of the crimes for which Petitioner is currently imprisoned. First, the district court's determination implies that the caliber of the weapon is irrelevant, i.e., "a gun is a gun." The district court's determination fails to consider the fact that much emphasis

was placed on Christy Liggins's AK-47 testimony all the way to the prosecution emphasizing to the jurors that Christy Liggins was familiar with this specific kind of weapon from prior experience. [] The district court's credibility determination fails to consider the fact that the prosecution argued to the jury that "the importance of what she [Christy Liggins] has to say" is that "she saw an injured person with an AK." The possession of a "handgun" statement is material because it contradicts the specific caliber of weapon needed to qualify for the "discharge of a firearm causing great bodily harm or death element" in each of the offenses. The jurors heard that the victims were shot with "high velocity ammunition" from an AK-47. Counsel's deficiency deprived the jurors of considering whether the "handgun" statement presents evidence of actual innocence as the "handgun" cannot fire the "high velocity ammunition" needed to sustain the convictions under the "discharge of a firearm" elements. (See App. 5, p. 18).

Second, the district court's credibility determination is unreliable as it implies that no specific make or model of the car is required as any silver or gray car suffices. [] ("Although she repeatedly stated that she could not describe the suspects in detail; she also said that she knew that she had seen them and the gray car in the apartment complex on previous occasions. She described the car as a gray or silver sedan.") The district court's credibility determination is inconsistently unreliable where Christy Liggins constant reliance upon her notably strong belief in her memory of this particular car, as distinguished from all other cars, is noted and neglected in the same order. []

("More specifically, she testified that she had seen them and the car in the apartment before on three occasions. She again referred to the car as being gray or silver, but she added the descriptor 'Pontiac type.'") Furthermore, the district court fails to consider the fact that at the trial Christy Liggins acknowledged that her recognition of the suspects was based on her specific memory of "bodyshape and the car" [1]. Thus, the district court's credibility determinations fails to consider that only one juror need be convinced of a flawed identification based on the contradictory descriptions of Christy Liggins recognition testimony as tainted by the inconsistent descriptions of the make and model of "the car." (See App. 5, p. 18-19).

And third, the district court's credibility determination is unreliable because it provides further justification for Christy Liggins's contradictory statements versus her trial testimony in stating that ("[a]lthough she initially described Petitioner as being 6'2", she also described him as being injured, coming down the stairs hunched over, and carrying a gun") [2], where the district court notably reflects and neglects that "On cross, Ms. Liggins said she recognized the Defendant's 'bodyshape and the car.' [3] She said she saw his face, 'the outline, the shape of his body.' [4] ('When asked to describe the injured suspect, she said he was leaning on the stairwell and holding himself when he came down the stairs.'") The district court's credibility determination fails to consider what impact Christy Liggins, notably strong reliance on her, contradictory recognition based on her memory of specific "bodyshape" would've had on the jurors at the trial. (See App. 5, p. 19)

On October 2nd, 2017, this Court denied the Petition For Writ of Certiorari. On June 28th, 2018, almost a year later, the Petitioner discovered the notarized affidavit of Lavaris Douglas's confession to the crimes for which the Petitioner is

Currently incarcerated (see App. T). Based on the contents of said affidavit, the Petitioner pled his claim of actual innocence all throughout the Florida judicial system only to be denied the meaningful opportunity to present exculpatory testimony that would tend to prove his innocence. (see case # 1019-1544, First District Court of Appeal of Florida). The instant proceeding is the Petitioner's only opportunity for review, because the federal district courts are prohibited from addressing freestanding claims of actual innocence in non-capital cases, see Herrera v. Collins, 506 U.S. 390, 400 (1993) and the lower federal district courts have already heard and rejected the issues that revolve around the testimony of Christy Liggins. Therefore, the instant Petition for Writ of Habeas Corpus that is presently before this Court is the only remedy that the Petitioner has available to correct the constitutional violations that have occurred in this case.

REASONS FOR GRANTING THE PETITION

The Petitioner alleges that he was deprived of his constitutional rights by the prosecution's knowing presentation of false evidence and by trial counsel's failure to effectively confront his accusers with exculpatory evidence that would tend to prove that someone other than the Petitioner committed the crimes for which the Petitioner is currently incarcerated. The Petitioner's allegation that the prosecution knowingly presented false evidence is substantiated by the contents of Supplemental Report # 6 which was written by officer G.M. Nagle # 5731 and approved by D.R. Schoenfeld # 6637 (see App. U). Said report contains officer G.M. Nagle's version of the events that took

place in the interview between said officer and the witness, Christy Liggins. The events that took place in said interview were not fully presented to the jury, because the jury only heard Christy Liggins's partial version of how said interview took place. The record is silent as to any perspective testimony that said officer may present at any hearing concerning his version of said interview. Even moreso, the Petitioner has never been permitted the opportunity to see Officer G.M. Nagle or D.R. Schoenfeld face-to-face to hear their perspective testimonies that would be based on said interview and the contents of Supplemental Report #6. Said perspective testimonies would show that Christy Liggins partial version of the interview was false.

The postconviction court rejected the materiality of said report by stating that "nothing [Christy Liggins] testified to in trial was directly inconsistent with previous testimony." (see App. E, p. 52). The district court construed this by stating that "her statement to the police officer was not sworn testimony." (see App. B, p. 31). However, this Court in Crawford v. Washington, 541 U.S. 36, 51 (2004), stated that "An accuser who makes a formal statement to government officers bears testimony." Therefore, the contents of Supplemental Report #6, i.e., Christy Liggins's formal statements to Officer G.M. Nagle were in fact material.

The Confrontation Clause provides the Petitioner with the right to confront his accusers. The Petitioner's right

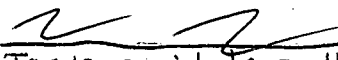
to confront his accusers is ultimately underlied by the jury's ability to determine the truth of the matter by its decision to believe or disbelieve the witness. The Petitioner has been denied this right because the Petitioner was unable to effectively cross-examine the witness regarding her prior inconsistent statements contained in Supplemental Report #6. Petitioner's trial counsel failed to effectively confront the accuser with exculpatory evidence that would allow the jury to see that there is evidence that someone other than the Petitioner committed the crimes for which the Petitioner stood trial. The jury's determination of the truth of the matter concerning the events that took place in the interview was, therefore, one-sided.

When taken as a whole, the inconsistencies in the witness's version of events, and the fact that the officers articulated that the witness gave a description that is inconsistent with the Petitioner's identity and ultimately the fact that the Affiant has come forward and confessed to the crimes for which the Petitioner was convicted is more than enough to indicate the possibility that the Petitioner may be incarcerated for crimes he did not commit. Habeas corpus is available to test the legality of the Petitioner's detention by production of the bodies of said officers and the Affiant to give exculpatory testimony about the events that took place on the night of the incident and to shed light on the unconstitutionality of the Petitioner's convictions.

CONCLUSION

Based on the foregoing, exceptional circumstances warrant the exercise of this Court's discretionary powers, and thus, the instant Petition for Writ of Habeas Corpus should be granted.

Respectfully Submitted,


Tarvares Watson #J26050

Date: April 9th, 2020