

CASE NO: 19-8625

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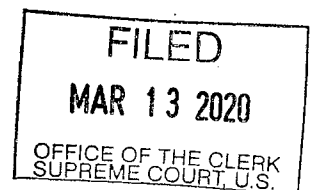
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DEDRIC DAVIS - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT



ON PETITION FOR WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Dedric Davis DC# A51401

Desoto Correctional Institution Annex

13617 S.E. Highway 70

Arcadia, Florida 34266

QUESTION(S) PRESENTED

WHETHER THE TRIAL COURT ERRED IN NOT
GRANTING PETITIONER'S MOTION FOR JUDGMENT
OF ACQUITTAL

LIST OF PARTIES

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

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APPENDIX A- Ruling of the First District Court of Appeal,
Appendix B- Judgment and Sentence of trial court.

TABLE OF AUTHORITIES CITED

Aford v. State

841 So.2d 587 (Fla. 2d DCA 2003)

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Beasley v. State

774 So.2d 649 (Fla. 2000)

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Jarmillo v. State

417 So.2d 257 (Fla. 1982)

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McBride v. State

7 So.3d 1146 (Fla. 2d DCA 2009)

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State v. Law

559 So.2d 187 (Fla. 1989)

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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 state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the First Judicial Circuit, in and for Santa Rosa County, Florida, appears at Appendix B to the petition and is unpublished.

JURISDICTION

For cases from state courts:

The date on which the highest state court decided my case was December 18, 2019. A copy of that decision appears at Appendix A.

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

STATEMENT OF THE CASE

Petitioner was indicted by jury on February 24, 2017 for: on count of second degree murder with a firearm; two counts of attempted second degree murder with a firearm; possession of a firearm by a convicted felon; and shooting or discharging firearm from a vehicle. He was convicted by a jury on September 14, 2018 of all charges and received a life sentence.

REASONS FOR GRANTING THE PETITION

THE TRIAL COURT ERRED IN NOT GRANTING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL BASED ON THE EVIDENCE PRESENTED IN TRIAL WHICH WAS INSUFFICIENT AND CIRCUMSTANTIAL

ARGUMENT

There was no sufficient evidence to prove beyond a reasonable doubt taken in a light most favorable for the prosecution that Petitioner was responsible for the shooting that occurred. In fact, the testimonial evidence presented was circumstantial based only on the fact that Petitioner was in the car at the time of the shooting.

In Beasley v. State, 774 So.2d 649, 657 (Fla. 2000), the Florida Supreme Court noted that where a conviction is based wholly on circumstantial evidence, a special standard of review applies. Citing Jaramilla v. State, 417 So.2d 252 (Fla. 1982), State v. Law, 559 So.2d 187 (Fla. 1989).

Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. McBride v. State, 7 So.3d 1146 (Fla. 2d DCA 2009), Acord v. State, 841 So.2d 587 (Fla. 2d DCA 2003). Also, the evidence presented by the prosecution, other than being circumstantial, was insufficient and at all times exculpatory.

In the present case there was the testimony of Ms. Pocapanni but she was a biased and tainted witness who testified in an attempt to clear her of the charges on which she was indicted. There was no independent evidence or direct physical evidence to prove that Petitioner possessed a firearm or participated

in the shooting. In fact, all the scientific evidence offered by the prosecution points to the contrary. There is no direct physical evidence proving beyond a reasonable doubt that the Petitioner was the actual shooter or even acting as a principal in the shooting.

The following is a summary of the evidence demonstrating that the court erred in not granting Petitioner's motion for judgment of acquittal based on the lack of sufficient evidence. (1) Ms. Pocopanni stated the Petitioner sat in the front passenger seat, whereas the testimony of the (2) prosecutor's DNA expert was that the DNA evidence analyzed from the front passenger seat discredited Ms. Pocopanni's testimony. Ms. Jennifer Wilkerson DNA expert's testimony was "... it's kind of a fancy way of saying I don't know if they [Petitioner] were there or not," (3) Ms. Taryn Emswiler did not recover any DNA evidence that she could associate with Petitioner. The prosecution called (4) Ms. Malorie Buehler as a scene witness and she did not identify Petitioner as someone that was present in or shot from the car. She testified that she ducked and did not see the shooter. The next scene witness called by the prosecution (5) Ms. Jones testified that she saw a window roll down and gun fire. She could not see who was in the car or who was firing the guns. Another scene witness (6) Mr. Deramus had similar testimony. Also, (7) Mr. Nairn another scene witness did see two black males with dreads in the front and rear passenger seats but could not make an identification. Finally, the prosecution's (8) cell tower expert did not place Petitioner's phone in the area at the time the crime occurred. The only testimony that Petitioner was present and fired a gun was from Ms. Pocopanni (who had a motive) and Mr. Green who stated that Petitioner made an admission to him, Mr. Green's testimony was discredited and may have been given under duress of himself being charged with the murder.

CONCLUSION

The prosecution did not present sufficient evidence to go to the jury. Also, any evidence that was presented by the prosecution was circumstantial and also exculpatory.

Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Dedric Davis

Dedric Davis DC# 451401