

20-6182

IN THE SUPREME COURT OF THE UNITED STATES

KYLE RAINEY (PETITIONER)

NO. _____

VS.

KEVIN RANSOME (RESPONDENT)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE PENNSYLVANIA
SUPREME COURT

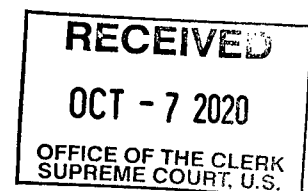
PETITION FOR A WRIT OF CERTIORARI

KYLE RAINEY (PETITIONER)

DW-6872

1000 FOLLIES ROAD

SCI. DALLAS, PA 18612



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1. THE STATE LOWER COURT DECISION DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN BRADY AND RELATED PRECEDENTS.
2. THE SUPERIOR COURT DECISION DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN BRADY AND RELATED PRECEDENTS.
3. THE PENNSYLVANIA SUPREME COURT ERRED WHEN IT REFUSED TO HEAR MR. RAINEY'S CASE.

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II

QUESTIONS PRESENTED

Under Brady vs. Maryland, a PCRA petitioner may establish a true Brady violation if the following can be proven; if the evidence at issue is favorable to the accused, either because it is exculpatory or impeachment evidence, and said evidence was suppressed by the state, either willfully or inadvertently and prejudice has ensued. To prevail on a Brady claim a petitioner need not show that he “more likely than not” would have been acquitted had the new evidence been admitted. He must show only that the new evidence is sufficient to “undermine confidence” in the verdict. 373 U.S. 83 (1963).

In both cases in which the petitioner claimed a Brady violation occurred, the PCRA court claimed, even if Commonwealth witness Elvin Odoms testified under an alias, Al-Asim M. Abdul Karim, and the state did not correct and withheld his crimen falsi convictions which occurred 20 years before Mr. Rainey’s trial, it still does not matter. Mr. Rainey would have to prove that there is a reasonable probability that the jury would have acquitted him based on his attempts to expose Mr. Odoms’ past criminal history. Additionally, the state court claimed, even without Mr. Odoms’ testimony there was overwhelming evidence that proved the petitioner participated in the crimes and his petitions are untimely filed.

The question in this case is as follows: whether a PCRA petitioner alleging a true Brady violation, and the state suppressed favorable evidence either willfully or inadvertently, evidence which Mr. Rainey could have used to expose Commonwealth’s witness Elvin Odoms, aka Al-Asim M. Abdul Karim, of his crimen falsi convictions that occurred 20 years before petitioner’s trial. Additionally, where the petitioner shows that the state court/PCRA court did not correctly apply Brady and held to prevail on a Brady claim, Mr. Rainey needs to show that he “more likely than not” would have been acquitted had the new evidence been admitted. Instead, Mr. Rainey must show only that the new evidence is sufficient to “undermine confidence” in the verdict.

III

LIST OF PARTIES

Petitioner Kyle Rainey is an inmate incarcerated in Pennsylvania pursuant to a life sentence of a Pennsylvania state court. Respondent is Kevin Ransom, Warden of the facility in which Mr. Rainey is incarcerated.

IV

OPINIONS BELOW

Appendix (A) State Superior Court order / opinion

Appendix (B) State Lower Court opinion

Appendix (C) Order of the State Supreme Court denying review

Appendix (D) Time Bar 9545 (b)-(3) Excerpted in relevant parts

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STATEMENT OF BOTH CASES

CP-51-CR-0708341-1994

On June 1, 1994 Mr. Rainey allegedly participated in a robbery with three (3) other co-conspirators during which a co-defendant shot and killed the storekeeper. Mr. Rainey was tried for and convicted of first degree murder under an “accomplice-liability” theory under Pennsylvania law; that is, although Mr. Rainey did not pull the trigger, the jury found that he had “shared intent” of his co-defendant to kill the storekeeper.

There is no evidence that Mr. Rainey intended that anyone kill the storekeeper or anyone else. Mr. Rainey’s case, *Rainey vs. Varner*, reported at 603 F.3d 189 (3d Cir. 2010) (precedential decision) is presently in conflict with the Third Circuit decision *Bennett vs. Superintendent at Graterford*, cited at 886 F.3d 268, 2018 U.S. App. 7505 (2018).

Judge John J. Poserina, Jr. sentenced Mr. Rainey to a mandatory life sentence.

On case CP-51-CR-1003961-1994, following a jury trial before Judge C. Darnell Jones, petitioner was convicted and sentenced to 10 to 20 years for robbery and 2 ½ to 5 years for possession of an Instrument of Crime (“PIC”).

JURISDICTION

The U.S. Supreme Court has jurisdiction over the final judgments of the state post/conviction court 28 U.S.C.S. & 1257 (a), and exercises that jurisdiction in appropriate circumstances.

STATUTORY PROVISION

TIME BAR 9545 (b)-(3) exceptions newly discovered/unknown facts, is excerpted in relevant parts at Appendix (D).

Several state and federal court appeals have been filed in both cases and have been denied.

However, on October 2, 2013 a Private Investigator named Mark H. Shaffer discovered that Al-Asim M. Abdul Karim was an alias for Elvin Odoms and that he had a criminal record of crimen falsi convictions. Also on March 31, 2015, PI Shaffer received an email from Elvin Odoms which confirmed that Elvin Odoms and Al-Asim M. Abdul Karim were the same person and Odoms had a history for being untruthful, use of alias, committing perjury, and lying under oath.

Specifically, Elvin Odoms testified under a fictitious name in both cases Al-Asim M. Abdul Karim and the Commonwealth violated discovery under Pa.R.Crim.P.Rule 573 (d) and *Brady vs. Maryland* and never interjected and clarified his true identity as Elvin Odoms and this was governmental interference. The state post/conviction court improperly denied Mr. Rainey’s *Brady* claim which ran up against settled constitutional principles. See *Wearry vs. Cain* 194 L.Ed.2d 78 (2016).

STATUTORY PROVISION (Cont'd.)

The state court claimed Mr. Rainey's PCRA petitions were both untimely filed. Nevertheless, the PCRA exceptions apply and have been met in both cases.

PCRA TIME BAR LIMITATION

To overcome the PCRA's time bar a petitioner must allege and prove one of the three exceptions. See 42 PA.C.S.A. & 9545 (b) (1) (i)-(iii). Here petitioner Mr. Rainey submits his petitions-qualifies for the After-discovered evidence exception and the "newly discovered unknown facts" exception which provides: (b) Time for filing petition, (1) Any petition under this chapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(ii) The facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of diligence 42 PA.C.S.A. & 9545 (b) (1) (ii).

Petitioner Mr. Rainey submits that both of his PCRA petitions satisfy the "newly discovered unknown facts" exception to the PCRA's time bar.

Mr. Rainey submits that the newly discovered unknown facts evidence was uncovered by his Private Investigator Mark H. Shaffer on October 2, 2013. Petitioner filed both PCRA petitions on November 27, 2013 after PI Shaffer uncovered this hidden information on October 2, 2013. Mr. Rainey should have been granted a new trial and/or evidentiary hearing based upon this suppressed exculpatory material evidence in violation of Brady. Weary, post/conviction granted by this Honorable Court based on Brady violation 194 L.ed.2d 78 (2016).

When Mr. Rainey received his discovery in both cases. It consisted of Al-Asim M. Abdul Karim's statements, not Elvin Odoms' true identity and criminal record of crimen falsi convictions. Al-Asim M. Abdul Karim had no criminal record under his fictitious name. The Commonwealth presented him as a law abiding citizen. Further, on July 6, 2007 Mr. Rainey filed a pro se motion in federal court before U.S. District Judge William H. Yohn, Jr., attempting to seek a favorable order from the court directing the Philadelphia District Attorney's office to turn over its witness Al-Asim M. Abdul Karim's correct birth name and any criminal abstract on this witness. The motion was denied without prejudice to the right of the petitioner to seek the information which he requested either directly from the Philadelphia District Attorney or through the State Court criminal justice system.

At such time Mr. Rainey had a third PCRA petition pending before Honorable C. Darnell Jones. Thereafter, petitioner made his discovery request on November 26, 2007. Court appointed counsel, Sondra Rodrigues, Esquire, who had adopted petitioner's motion. Next, the investigator failed to discover Al-Asim M. Abdul Karim's true identity. Most importantly the Commonwealth continued to remain silent and suppress this information. Judge Jones denied Mr. Rainey's PCRA petition. Thereafter, petitioner diligently returned to Judge Yohn, in an effort to receive a favorable Order.

PCRA TIME BAR LIMITATION (Cont'd.)

However, petitioner's efforts were rejected. On November 30, 2007 petitioner sent \$50.00 to Spartan Detective Agency Service, Inc. located at 2009-2013 Morris Avenue, Union, NJ 07083 requesting a criminal background search on this key witness.

A Private Investigator, Richard T. Strohm, conducted a criminal background search on Al-Asim M. Abdul Karim and discovered that there is no one with the name Al-Asim M. Abdul Karim or date of birth 12/23/39, which he gave to Detective Buckley. Basically he does not exist. PI Strohm did not uncover Al-Asim M. Abdul Karim's true identity nor criminal record.

Mr. Rainey made another attempt on January 29, 2010 with the Pennsylvania State Police. Petitioner provided them with Al-Asim M. Abdul Karim's address 5225 Addison St., Philadelphia, PA, birth date 12/23/39, along with his brother named Bernard Odoms, Jr. which Mr. Rainey received in discovery. This established that Al-Asim M. Abdul Karim intentionally lied to Detectives Buckley and Maahs on June 1, 1994 and June 26, 1994 about his identity as Elvin Odoms.

On October 23, 2013 petitioner requested that the Pennsylvania State Police conduct a search on Elvin Odoms, birth date 12/23/39 and the same address 5225 Addison St., Philadelphia PA which established and confirmed Private Investigator Mark H. Schaffer's reports that Elvin Odoms has a criminal record of crimen falsi convictions.

The record is clear in both cases. The Commonwealth has violated discovery under Brady by not revealing Elvin Odoms' true identity and his crimen falsi convictions. Under Brady it should have been revealed that the Philadelphia District Attorney's office has prosecuted Elvin Odoms in the past and that he has a history of being dishonest, use of an alias, perjury, making false statements, and lying under oath. This did not occur. Certiorari should be issued in both cases.

REASONS FOR GRANTING THE WRIT

CP-51-CR-1003961-1994

Mr. Rainey was tried in two separate trials for two separate robberies wherein the Commonwealth sought to prove identity of a common scheme and plan. N.T. 10/25/95 at 5. While the present case dealt with the first robbery, it was the second trial to occur. N.T. 10/27/95 at 61. The second robbery occurred on June 1, 1994. N.T. 10/27/95 at 27. Key witness Al-Asim M. Abdul Karim was a "supposed" eyewitness to the events of the second robbery. See N.T. 10/27/95 at 28, 117. The only eyewitness to the events of the first robbery was the victim, Mr. Sam Lee. Mr. Lee testified that on March 26, 1994 at approximately noon "two people approached the store." N.T. 10/27/95 at 39. Mr. Lee buzzed them into the store thinking they were regular customers and he remained seated by the front door so he could buzz other customers into his store. N.T. 10/27/95 at 61-62. Once inside the two men wandered around looking at merchandise and one of the men asked Mr. Lee to look at some merchandise. N.T. 10/27/95 at 40. After helping the man, Mr. Lee went back

REASONS FOR GRANTING THE WRIT (Cont'd.)

Went back to his normal seat so he could "let customers in and out." N.T. 10/27/95 at 69. It was then that Mr. Lee first "noticed that there was another person outside looking into the store." Mr. Lee testified that he looked at the other person but he did not "see him distinctively." N.T. 10/27/95 at 69. Mr. Lee testified that the two men in the store gave two quick glances in the direction of the front window where Mr. Lee saw the other person. N.T. 10/27/95 at 49. Then Mr. Lee saw the other person not his head and one of the men in the store pulled a gun out. N.T. 10/27/95 at 50. Immediately after one of the men pulled out the gun Mr. Lee was ordered to lie down on the floor. N.T. 10/27/95 at 51. One of the men handcuffed Mr. Lee and he was told to lie on the floor face down. N.T. 10/27/95 at 41. One of the men told Mr. Lee to shut up and fired a shot in the floor. N.T. 10/27/95 at 41. The men tried to shatter the glass on the display cases to get at the jewelry. N.T. 10/27/95 at 41. Mr. Lee told them there is a key to open cases. N.T. 10/27/95 at 41. The men then took out a black trash bag and "started taking everything inside the store." N.T. 10/27/95 at 41. The men left the store and Mr. Lee tried to chase them. N.T. 10/27/95 at 42. He was not able to locate any of them and went back to the store to call the police. N.T. 10/27/95 at 42. While Mr. Lee may have identified Mr. Rainey in court in October 1995 approximately nineteen months after the events in issue, he was not able to identify Mr. Rainey in a lineup N.T. 10/27/95 at 92 only six months after the robbery on September 24, 1994. N.T. 10/31/95 at 75. Mr. Lee indicated on September 24, 1994 when he went to the police lineup that the man outside the window was approximately sixty-five inches in height. N.T. 10/27/95 at 88. It was stipulated that Mr. Rainey is actually seventy-one inches in height. N.T. 10/27/95 at 89. In addition to Mr. Lee, Mr. Al-Asim M. Abdul Karim testified at trial. Al-Asim M. Abdul Karim testified that he saw Mr. Rainey as an accomplice to a robbery that took place on June 1, 1994 (the second robbery). N.T. 10/30/95 at 32. At the time Al-Asim M. Abdul Karim was in the immediate vicinity of the robbery waiting for the person he was with to finish shopping. N.T. 10/30/95 at 28. He testified that he notices a robbery taking place in front of him. N.T. 10/30/95 at 28. Mr. Al-Asim M. Abdul Karim identified petitioner as one of the accomplices to the robbery in court. N.T. 10/30/95 at 30. The Commonwealth established further evidence of links between the two events. Most importantly, the Commonwealth introduced evidence that there was a common sidearm that was used. N.T. 10/31/95 at 75. The Commonwealth also tried to establish a link by use of a pair of "unique" handcuffs that were used in both robberies. N.T. 10/31/95 at 159.

CP-51-CR-0708341-1994

As previously stated, On June 1, 1994 it is alleged Mr. Rainey and three (3) co-conspirators robbed a jewelry store. During the robbery, the gunman Nathan Riley shot and killed store owner Sun Yoo Kang in front of his wife Mahlee Kang. Officers of the Philadelphia Police Department interviewed Mrs. Kang and Al-Asim M. Abdul Karim who was present outside the store in a parked automobile. Both individuals provided information regarding the identity of two (2) males who had entered the store, another male who remained in a car parked in front of the store, and a

REASONS FOR GRANTING THE WRIT (Cont'd.)

fourth male, allegedly Mr. Rainey closed the door after the two males entered the store. On June 26, 1994 Mrs. Kang and Al-Asim M. Abdul Karim are supposed to have positively identified petitioner.

Mrs. Kang's first statement on June 1, 1994, given to Detective Brennan, describes the "kids/boys" that committed the crime.

Q. Describe the one with the gun?

A. Black male 16 to 18 years old, long skinny face, not too thin, very light skinned, a little darker than my complexion. Light brown hair, lighter than mine, very light brown eyes. He was small, about 5'3" or 5'4" and thin. S light navy blue T-shirt, long pants, I don't remember but they might have been black.

Q. Describe the male with the bag?

A. Black male 16 to 18 years old, dark black complexion, darker than the other one, about 5'1" or 5'2" skinny, white hat, white shirt and white pants, I don't know if they were pants or shorts.

Q. When they left your store, where did they go?

A. They got into a blue car, it was double parked in front of the store, and then the car went west.

Q. Could you see how many other people were in the car?

A. I didn't see, but the driver was waiting for them. As soon as they got in the car moved.

Q. How many shots were fired in your store?

A. One.

Q. Can you describe the gun?

A. Grey and in between it had the silver color. (Shown a .38 SW revolver and a glock and she described the gun as looking like the glock).

Q. How did these males get into the store?

A. The door was tied open with a string to let air in.

Q. Can you describe the male that shut the door?

A. He was dark skinned, a little bit older maybe 19.

Q. Why was the door to the store open?

A. Because it's spring time. To let the air in.

REASONS FOR GRANTING THE WRIT (Cont'd.)

In Mrs. Kang's first statement on 6/1/94, the date of the incident, she stated the third boy was maybe 19 who shut the door. It was later written in beside that statement. He looks fatter than the other two boys. Notably, her initial statement is typed, not handwritten. The petitioner submits that Mrs. Kang did not make this statement on June 1, 1994, he looks like fat then the other two boys, because look at the above question and answer on same page (3).

Q. Who shut the door after the males got into the store?

A. There was a (3rd boy). He had on a green top. As soon as the 1st two boys came in the store he was right there with them. He lifted the string and let the door close, but he didn't come in the store. I don't know where he went after he let the door shut because that is when the boy with the gun shot my husband.

Further, see Mrs. Kang's second interview with Detective Hugh and Maahs, when she allegedly IDs Mr. Rainey on June 26, 1994, she stated as follows:

Q. Now we would like you to look at a group of photos that is marked #94-178 photo display #2 please take your time and look at these photos. Tell us if you recognize anyone?

A. Looks just like the one who untied the door. He as big "fat" he had smooth skin. I looked directly in his face. He was wearing a turquoise green shirt, with red in it. (Identifies photo Kyle Rainey).

Following, during the preliminary hearing, see N.T. 7/20/94 pgs. 22.23.24, by Ms. Fisk (through interpreter):

Q. The guy who pulled the string to close the door, did you see him?

A. Yes, I did.

Q. And what part of him did you see?

A. Saw his face, and up to right here (indicating).

Q. And you indicating chest level?

A. Yes sir.

Mr. Gorson: Just above the solar plexus.

By Ms. Fisk (through interpreter)

Q. Do you see in the courtroom today, the man who pulled the string, third man who pulled string closing the door your jewelry store?

A. Yes, there he is.

A. Right there (indicating).

REASONS FOR GRANTING THE WRIT (Cont'd.)

Ms. Fisk (through interpreter).

Q. Do you see in the courtroom today, the man who pulled the string, third man who pulled string closing the door your jewelry store?

A. Yes, there (indicating).

Ms. Fisk: indicating for the record Your Honor, the defendant Kyle Rainey.

THE COURT: Now, who is that person again? Ask her. Ask her again who that person is.

By Ms. Fisk: (through interpreter):

Q. The person that you have pointed to--.

A. The guy with the white T-shirt.

Q. What is that you saw him do?

A. He pulled the string like that was attached to the gate and closed the door.

Q. Now, when he closed the door, I couldn't see him because the other guy, he's not, told me to say anything, so they told me not to move.

THE COURT: They were, did you say?

Ms. Fisk: "They already shot my husband at the point, and they told me not to move".

Mr. Gorson: And, I object to the District Attorney's responding to the question, it's something to be read back.

THE COURT: All right, N.T. 7/20/94 pgs. 22/23/24, 26, & 27, by Ms. Fisk (through interpreter)

Q. And, how did the man shoot your husband?

A. As he came in, he say, don't move to her, he was pointing the gun at her as he was entering the store, he pointed the gun right away, he shot my husband.

A. He was pointing at me with a gun, so I cannot move. See N.T. 7/20/94 pg.39, By Mr. Gorson (through interpreter)

Q. Ma'am now long would you estimate it took the man who was closing the door outside you store, to close the door, ham many seconds?

A. About a couple [seconds], but I can remember him very well, because I remember while he was putting up the string and I looked at him at the time.

REASONS FOR GRANTING THE WRIT (Cont'd.)

The petitioner submits given both highly questionable cross racial identifications under United States vs. Graves, 465 F.Supp.2d 450 (2006); that held cross racial identifications are less reliable than same-race identifications. In both cases Mrs. Kang and Mr. Lee are Korean descent and petitioner Mr. Rainey is African American. Mrs. Kang states, she can identify Mr. Rainey in (2) seconds while a life tragedy is unfolding in front of her and Mr. Rainey is allegedly (10) to (20) feet's away from her and never entered the store. With all due respect it is impossible. Following Mr. Lee identification is also incredible. Mr. Lee alleges that he can identify petitioner Mr. Rainey from (8) to (10) feet away, allegedly standing outside his store and signing to (2) inside accomplices to begin the robbery and a warning shot is fired. Noted, Mr. Lee selected a fill-instead of Mr. Rainey during a lineup. N.T. 10/30/95 at 75. Along with the Brady violation concerning Key Commonwealth witness Elvin Odoms (AKA) Al-Asim M. Abdul Karim.

The Court should grant this petition issue the writ of Certiorari and reverse the decision of the State Court's and appointment of counsel.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted

Kyle Rainey

Kyle Rainey (Petitioner)

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October 1, 2020