No. 21-5825

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Ragib Abdul al-Amin — PETITIONER
(Your Name)

vs.

State of South Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Ragib Abdul al-Amin
(Your Name)

430 Oaklawn Road
(Address)

Pelzer, South Carolina 29669
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the South Carolina Supreme Court error to affirm the trial Court's ruling where the trial Court was convinced by the State's 'third-party guilt' theory that al-Amin was guilty; denied and diminish al-Amin's attempt to prove his innocence; a constitutional right to present a complete defense grounded in Due Process, Confrontation; and Compulsory Process.

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:

RELATED CASES

It is rooted in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty without convincing a proper fact-finder of his guilt without utmost certainty. Speiser v. Randall, 357 U.S. 513 (1958). C

Central to an inquiry is whether, based on the record in its entirely, the proceeding against the accused resulted in a fair and reliable determination of guilt. U.S. v. Cedelle, 89 F.3d 181 (4th Cir 1996),

If there are serious errors in the state court which frustrated the ascertainment of truth, Federal Habeas Corpus is required. Townsent v. Sain, 83 SCt. 745 (1963),

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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[ ] is unpublished.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.

[X] 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,
[X] is unpublished.

The opinion of the ______________________________ 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.

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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was August 6, 2021. 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).

Jurisdiction

Petitioner filed a petition of habeas corpus seeking the South Carolina Supreme Court seeking a review in its original jurisdiction on or about October 23, 2020, challenging trial court error, Appellate Court error and PCR court error.

The South Carolina Supreme Court entered judgment on August 6, 2021. Petitioner file this brief. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the Constitution provides in relevant part: "No State shall ... deprive any person of life, liberty, or property without due process of law." U. S. Const. amend. XIV.

The Sixth Amendment of the Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by a impartial jury...; to be confronted with the witnesses against him; [and] to have compulsory process for obtaining witnesses in has favor." U.S. Const. amend VI.

28 U.S.C. § 1257(a)

BACKGROUND

This is a classic case of our legal system gone wrong. After 24 years this is the continuation of an attempt to fine justice. The suffering endured by the petitioner and family is incalculable. The principle of Actual Innocence could have been crafted with this petitioner in mind.

CONSIDER THAT....

You and your wife dine at a nice restaurant, than exit to your parked car. But you realize,, just as you seat your wife in the front passenger's seat, that you have left your wallet in the restaurant. You return to the restaurant to retrieve your wallet. When you retrace your steps to your car you find your wife dead -- and your pistol is in the floorboard between her legs. Your first reaction is complete shock, then you ask yourself, "Oh, Lord, why me?"

This actually happened of course, and the helpless fellow was arrested and endured five (5) years of incarceration before dedicted, effective trial advocacy finally exonerated him. It turns out that a brutal robber had come along in the brief span of time that the defendant was away from his wife, held her at gun-point, searched the grove compartment at her knees for valuables, found the defendant's handgun, and shot his wife with that weapon, so as to have a 'clean' handgun on his person, should he be questioned.

The petitioner's case herein bears eerie similarities to the story just recalled, with the exception that the petitioner has now suffered twenty-four (24) years, due to entirely to bizarrely bad luck, very bad lawyering (both trial and appellate) shoddy police investigation and prosecutorial misconduct.

STATEMENT OF THE CASE

A. Justice Delayed Is Justice Denied
Here Are The Silent Facts

The petitioner and his wife, Audrey, were in a strained relationship. The petitioner rented a separate apartment across town so that he might, temporarily, achieve some personal 'space'. He had been living at ChurchHill apartments barely a month when his life came apart, after he casually met a woman, Elizabeth Pryor, who also lived at ChurchHill with her boyfriend James Conyers. The petitioner rented Apt. 4 on the ground floor, whereas, Pryor, along with her live-in boyfriend, Conyers, rented Apt. 220, on the second floor building behind the petitioner's building.

Pryor, as matter developed, was a "crack addict," who routinely sold her body to almost anyone willing to remunerate her, so that she could perpetuate crack (cocaine) addition.

"Crack addicts" are notoriously prone to suffer from HIV of full-blown AIDS, due to sexual promiscuity and other vicious habits. The petitioner, thus, studiously avoided any sex with crack addicts, so, not knowing Pryor's health status, he never had any form of sexual contact with her. On the other hand, it appears that her live-in boyfriend, James Conyers, had no such qualms.

On the morning of August 25, 1997, Pryor came to the petitioner's apartment and asked for food. She reported that she was broke, had no food, and that she and Conyers had been quarrelling, and that she was afraid to return to her apartment for fear of physical violence from Conyers.

The petitioner had plans for the day and could not host her. He offered her some food and informed her that she could stay in his apartment for the moment, but that she "had to be gone" before his anticipated return approximately 3. P.M. that day. Whereupon, the petitioner and his acquaintance, Darryl Cunningham departed the apartment comple on foot, neither having any transportation, and heads to the nearest bus stop to take a bus downtown. During the trip downtown, Cunningham reported that he had to return to the petitioner's apartment because he had left his walkman radio behind. Cunningham testified at trial that Poyor was at the apartment when he returned. Cunningham testified "she let me in." Trial record ("TR.") 658 at line 5. He retrieve his radio and departed again, leaving Pryor in the petitioner's apartment. See Exhibit B.

The petitioner visited a bank at the Southern terminus of his visit downtown. (The bank receipt proved his presence at the bank, the time he was there, TR. 445 at line 5). However, the petitioner walked to the nearest bus stop, missing the next bus going back to his apartment. Therefore, an half hour passed before he could connect with the next available North-bound bus [2:00 p.m.]. On his way back Cunningham also caught the same bus.

When he exited the city bus, he and Cunningham Parted company.[2:30 p.m]. Cunningham cross the street to a neighborhood convenience store, see Exhibit H-2, while the petitioner headed to the pay-phone to make a call. See Tr. 528 at 25, also see Exhibit B. [His trial counsel failed to supoena the video-tape of Cunningham's visit to the convenience store of the telephone records which would have made it temporary impossible to kill the victim]. Then he head down Main street not returning back to his apartment as Cunningham made a more direct route back to petitioner's apartment by himself.

When the petitioner reached his apartment, the door was unlocked. Entering, he was flabbergasted. His usually-neat apartment was in total disarray. There was blood on the carpet from the open area to the bathroom. Furniture had been knocked askew. In stunned disbelief, he entered his bathroom and discovered the victim's lifeless body slumped head first into the bathtub. Her shorts were pulled downed to her knees and bra was elevated so as to expose her breast. There was abundant blood on her head, face and clothing, as well as on the floor, but no weapon was in sight.

Here, then, is the petitioner, at an odious murder scene --- in his apartment. His mind is reeling. Everything is surreal. He knows that he has a prior conviction (resulting quite significantly, in no physical injury). He is separated from his wife, attempting, by the passage of time, to heal his rift with her. Now he discovers that there is a dead body in his sanctuary. Matters could not be worse. How in the world is he going to explain this to his wife? The police? Surely, as a convicted folon, he will be prime suspect in this foul deed. How can he ever explain any of this.

Where is Cunningham? Where is Conyers? Where are Jerry Watkins and "Frog" both seen with the victim that day. He is the perfect FALL GUY!

In a panic, he wraps the body in a blanket and drags it to the door of the apartment. He must get rid of this body! This is not fair! But why should he be arrested for something he knows nothing about? If he calls the police, which he seriously considers then decides against, he will certainly be arrested.

B.

Whether the South Carolina Supreme Court error to affirm the trial Court's ruling where the trial Court was convinced by the State's ~~Third~~-Party Guilt theory that al-Amin was guilty; denied and diminish al-Amin's attempt to prove his innocence; a constitutional right to present a complete defense grounded in Due Process, Confrontation; and Compulsory Process Clause?

During al-Amin's trial, trial counsel first raised the issue of the exclusion of evidence relating to the presence of unidentified sperm in the victim's vaginal vault. He also argued that it was improper for the State to limited testimony of the chief investigating officer that investigations "usually focus first on the person closet to the victim," i.e., James Conyers. Last, he argued that it was improper for the State to limit testimony of the chief investigating officer as to his taking of petitioner's statement, to see if he verified the information given to him pretaining to his 'Alibi' i.e., Darryl Cunningham; who petitioner alleged he was with the day of the murder. See Exhibit A.

Petitioner's trial counsel argued that the State improperly excluded these three pieces of evidence in what the State characterized as improper 'Third-Party guilt' evidence. The trial record conclusively show that trial counsel was face with the same dilemma that was later decided in <u>Holmes v. South Carolina</u>, 547 U.S. 319, 126 S.Ct. 1727 (2006):

a. The Facts

"I seek its introduction so that the jury can understand the evidence surrounding this case both that which implicates Mr. Al-Amin that which does not implicate Mr. Al-Amin. My understanding of third-party guilt is that I can't take a piece of evidence and say in a speculative fashion that some other individual did it. We know specifically that the State went and had blood drawn from one Darryl Cunningham in this matter and compared it to the results of the testing done on the victim in this case and it doesn't match him either.

"My point is that had they not done that, I would not have been in position to go ahead and argue that who knows, this could be Mr. Cunningham's. I can say this evidence that we know is not Mr. Al-Amin's. It's not Mr. Al-Amin's. Just as if we found a fingerprint on a murder weapon that was not Mr. Al-Amin's I would be justified in saying I don't know who's it is, but it's not his.

"Now, that's part and parcel of the evidence in this case. And I think -- I think I have an obligation and this Court, which all due respect has a duty to permit the jury to hear that sort of evidence. They can draw from it what inferences they will. I think where my obligations as an officer of this Court, and I can't go ahead and argue that to the jury -- I don't think I would; however, it's part and parcel of the evidence in this case. I would submit that applying some rule of evidence in this matter prohibits Mr. Al-Amin from presenting a defense as he is entitled to under the constitution of the United States and the Constitution of this state. It prohibits me or inhibits my effective representation of my client, denying him his right to such effective representation. I think, again, under both the state and federal constitutions. And violates his right, with all due respect, to due process of law under both the State and federal constitutions. He's got a right to be heard in his defense and that means not just in his proper person, but in an evaluation of the evidence.

"He's -- that right is specifically guaranteed by South Carolina constitution. I think it's certainly implied in the Federal Constitution and I would submit that to apply some rule of evidence to prevent him from being heard, from the evidence in his case being heard violates that constitutional right and that all impacts on his due process rights and I would object to being denied the opportunity to investigate and evaluate the evidence intimately and you can't get much more intimately related to this case, specifically, the sperm recovered from the victim in this case...."

See Exhibit A page 16, ll. 23-25 through page 18, ll. 1-20.

The ruling in Holmes, supra did not articulate a new law with that case. cf., Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989), rather, it corrected an erroneous extension of South Carolina's third-party guilt jurisprudence that allowed a trial court judge to weigh the State's evidence in determing whether purported third-party guilt is admissible at trial. The United State's Supreme Court found this extension "arbitrary" and deny's the defendant the right to present a meaningful defense. Id. at 331. See also Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142 (1988).

Petitioner now argues that the trial court judge in this Case committed the Holmes error because it assessed the case through the lens of the State's case against him, and excluded three (3) factual pieces of evidence and the forensic evidence because "we are not trying him for any type of sexual conduct." Tr. 779, ll. 24-25, through page 779, ll. 1-9. The Court then mischaracterized the evidence, post hoc, as "third-party guilt" and forbade the State's expert from testifying to her full conclusion regarding the findings of her autopsy which included the sperm, that the State tested only insofar as to exclude Petitioner and Darryl Cunningham. In the State's closing argument, the State said this:

"They've got not one shred of physical evidence. That's what they said. That's what they hollered in there opening. Not one shred of physical evidence. Well, he destroyed it all. He cleaned it all up and then where -- where the right becomes wrong because we don't have the evidence that he destroyed."

Tr.

b. The Exclusion of Third-Party Guilt Evidence Violated Al-Amin's Right to Trial by Jury.[100]

The jury never heard anything about the sperm at all. The jury was not inform about the victim's relationship with James Conyers, whom both live togather in the same apartment complex. The jury was not inform from the lead investigator that when he took the Petitioner's statement, the Petitioner gave the lead investigator a statement concerning his 'Alibi', but never admitted to the murder." See Exhibit C and

D (PCR Transcript dated June 7, 2007 and PCR Order of Dismissal dated November 20, 2007). "The absence of a charge on alibi gave rise to a conclusion by the jury that it was impermissible for them to consider alibi as a defense." Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1992) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

The State tested Cunningham's DNA along with the Petitioner, because Cunningham was actually with the Petitioner the day of the murder. Petitioner was entitled to have counsel fully challenge the investigation that centered on him and to the exclusion of all other existing in the universe. The trial Court judge ruling prevented that from happening. This is an issue that was raised on Appeal, but before the ruling in Holmes, supra. The Court of Appeals committed an error of law in denying Petitioner a new trial on this issue. Holmes should be applied retractivily here.

"A defendant has a constitutional right to present a complete defense." Chamber v. Mississippi, 476 U.S. 683, 93 S.Ct. 1038, 1045-46 (1973) and Crane v. Kentucky, 410 U.S. 284, 186 S.Ct. 1038 (1988). To twart a defendant's legitimate attempt to defend himself is to pollute the integrity of the fact-finding and truth-seeking process. A critical ruling by the trial court which frustrates a defendant attempt to exonerate himself violates the constitutional requirement of Chambers and Crane that a defendant must have a fair opportunity to defend himself.

In the Petitioner's case there were two crucial rulings by the Court which violated the mandate in Chambers and Crane.

First, the Court ruled the efforts by the Petitioner to introduce certain forensic evidence was a veiled attempt to argue third-party guilt, when, in reality, these efforts were no more than attempts to demonstrate his own innocence. Tr. 387 at 19-25 and Tr. 388 at 1-17.

But even, assuming arguendo, the Petitioner's forensic evidence attempts could possibly be construed as a "third-party guilt" gambit, to thwart the Petitioner from presenting such evidence (which, pointedly, was collected by the State because, ostensibly, the State considered it important) constituted a decision by the Court to force the jury to view the whole case through the lens of the State's theory of the case, in violation of Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct 1727 (2006), citing State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941).

Second, the trial court affirmatively excluded favorable sperm -- fraction DNA evidence which excluded the Petitioner from any sexual contact with the victim. The Court erroneously based its decision to exclude this critical evidence entirely on the State's decision to not alleged a sexual element to the charge. See Tr. 396 at 12-19.

Such a decision by the trial Court was in error under the analysis and reasoning laid out in House v. Bell, 547 U.S. 518, 126 S.Ct. 2064 (2006). Just because the State does not suggest a sexual element does not mean that one does not exist, and a defendant should be premitted to offer evidence to that effect if it sheds light on what actually happened or may have realistically happened. To excluded such evidence would be to force the jury to view the case exclusively through the lens of the State's case. "In the DNA situation you have others at some point in time prior to her death having initimate contact with her." Tr. 289

C. Absence of Evidence / Actual Innocence

At trial, the state attempted to construct an illusion of circumstantial evidence to 'prove' that the petitioner was guilty of murder. However, an honest examination reveals that nothing that was presented to the jury could establish anything more than displacement of a human body or guilt of accessory after the fact.

The petitioner informed trial counsel that he would be willing to plead guilty to either accessory after the fact or displacement of a human body, because either plea would be accurate. He admitted that he was guilty of poor judgment, driven by panic which overwhelmed him upon the shocking discovery of a body in his bathtub. He needed time to rationize this surreal scene, Who did this and why?

The petitioner had been in jail before, so he knew that it was impossible to function there. But he had been guilty then. Now, as an innocent, it was so unfair. His life was evaporating at an alarming rate. Everything was hazy -- in slow motion. He needed time to sort things out. Why should he have to explain something he know nothing about?

The petitioner and his wife were now living in separate places. If she learned that he had apparently been in the company of another woman, reconciliation would have been out of the question. He decided that disposing of the body was only reasonable option. The victim was dead. There was nothing he could do about it. Why should he become a scapegoat for someone else's foul deed?

Law enforcement and, the prosecution made of his "flight" (to a girlfriend's residence) and his "sanitation" of his apartment, but under these circumstances, how else could he avoid being sucked into this unfolding tragedy?

The petitioner's "flight" (578 S.E.2d at 37) was not "flight" at all. It was merely a retreat in the hope that time would resolve this awful episode (EVEN) if he engaged in "flight," flight from what?

Moving a dead body? Accessory after the fact?

The petitioner never confessed to the murder of Elizabeth Pryor for the very good reason that no confession was required. [Whereas, Wakeel Rasheed openly confessed to the murder, see Exhibit C, D and G]. The petitioner is innocent - factually innocent. Sawyer v. Whithley, 505 U.S. 579, 112 S.Ct. 2514 (1992); United States v. Mikalajunas, 186 F.3d 490, 493 (4th Cir. 1999). If his trial had been fair, allowing him a complete defense (or if trial counsel had presented an Alibi defense), no reasonable juror (as a trier of the facts) could have found him guilty. House v. Bell, 547 U.S. 518, 126 S.Ct. 2064 (2006).

The petitioner had reluctantly consented to allow the victim to spend a few hours in his apartment - to escape the wrath of her live-in boyfriend, James Conyers (who, not coincidentally, disappeared ["flight"] immediately after the murder. See Exhibit T]. See also Writ of Cert. 1238 at 14-18; Tr. 713 at 9-11. Pryor and Conyers lived in apartment 220; the petitioner lived in apartment 4 (ChurchHill Apartments).

Pryor told the petitioner she was hungry that she had not eat recently. The petitioner proved her with some food. When the petitioner left with his friend Darryl Cunningham, to go down town to his bank, he told the victim that she could stay brief in his apartment but that she had to be gone or before or upon his return. The petitioner left the door to his apartment unlocked when he left with Cunningham on his trip downtown. See Exhibit B i.e., Tr. 590 at 109; Tr. 664 at 20 through 665 at 2.

The petitioner and Cunningham made their trip by foot and city bus. [This left the victim in the petitioner's apartment at least one hour and thirty minutes before Cunningham had return]. But during this time Cunningham returned to the petitioner's apartment to retrieve items he had "forgotten". See Exhibit H-2 and H-3. One item was a walkman radio, the other was a cold drink he had purchased at a nearby store. On the trip both the petitioner and his momentary companion, Cunningham, exit the bus at the same time. Id. Tr. 665 (trial counsel did not asked the next question "did petitioner returned to the apartment with him?" Cunningham did not return to the apartment with the petitioner. In fact he "fled" the scene. The petitioner never saw him again until trial.

Because the State's case for murder was weak that its strategy was to construct the illusion of guilt through the dust of distraction and diversion, riding hard on the petitioner's alleged lack of credibility and obstructing the petitioner's efforts to present a complete defense. <u>Holmes v. South Carolina</u>, 547 U.S. 319, 126 S.Ct 1727 (2006) and <u>Chambers v. Missi-</u>

issippi, 410 U.S. 284, 93 S.Ct. 1038 (1973). An unsophisticated jury, selected through no more than 7, minutes of individualized examination (if, indeed we dignify this vacuous process as any kind of "examination" at all) was easily duped by this strategy. There was, in truth, no real adversarial testing. The petitioner became an unarmed soilder of misfortune.

The evidence adduced at trial, when viewed fairly, fully and objectively, was clearly inconclusive of murder. Particularity instructive in this regard is the recent case of House v. Bell, 547 U.S. 518, 126 S.Ct 2064 (2006), similar in so many ways to the petitioner's case herein. Furthermore, "mere suspicion," no matter how strong, tempting or suggestive, is never a substitute for proof and can never form the foundation for a conviction.

The absence of evidence for murder by the petitioner (a carefully-developed timeline even precluded that possibility) is a classic case of sufficiency of the evidence. Such insufficiency requires reversal in federal Habeas Corpus under Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)

a. A critical analysis of the state's case demonstrates:

1. The petitioner was never placed at the scene. Tr. 307 at 25; Tr. 308 at 1-2. See E.g., State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) and State v. Schrock,

283 S.C. 129, 322 S.E.2d 450 (1984).

2. No motive was ever suggested by the State. See E.g., House v. Bell, 547 U.S. 319, 126 S.Ct 1727 (2006).

3. Neither intent nor premeditation could be assigned to the petitioner.

Even if it could be said that intent could be implied through the use of a deadly weapon, the State could never say, let alone prove, that the petitioner struck any blows. Moreover, Arnold v. Evatt, 113 F.3d 1352 (4th Cir. 1997), predated our state case of Belcher v. State, 385 S.C. 597, 685 S.E.2d 802 (2009) by more than twelve (12) years and specifically and unambiguously declared that malice may not be implied by the use of a deadly weapon (at 1356). Arnold was controlling law at the time of the offense charge.

4. None of the forensic evidence (for murder) implicated the petitioner

5. The prosecution and the trial court combined to exclude sperm DNA evidence, which exonerated the petitioner. See Tr. 396 at 4-9.

Since, as in House, the jury could have concluded that the murder of the victim revolved around (or included) a sex act, fresh sperm was found in the victim's vaginal vault, it was error for the jury not to have heard and considered this factual evidence. See Tr. 289 at 18-24 and Tr. 290 at 8-13.

6. Although the State lobbied feverishly to prevent the sperm DNA evidence from being introduced, claiming it was irrelevant, it insisted upon introducing 'drug' evidence, but never explained why the crack pipe found in the victim's pants was never tested to determine if it had ever been used, or, if so, whether any drug residue was consistent with the 'drugs' alleged to be used at the crime scene.

7. No saliva or fingerprint evidence was taken from the crack pipe to determine who might have touched it or used it. No saliva evidence was ever taken from part of the victim's body (lips, breast, vagina, e.t.c.) to determine who had this kind of intimate contact with her.

Because the State could not prove its case for murder by the petitioner, it shamelessly resorted to ambushing the petitioner with the petitioner with an allegation of "flight" ("Flight may serve as some evidence of guilt, but guilt of what?), as well, the State suggested that his prior conviction (Youthful Offender conviction i.e., S.C. Code Ann. § 24-19-10 to 160, see Exhibit Q, Q-1, Q-2, Q-3, Q-4, Q-5 and Q-6, which incidentally, involved no physical harm to anyone) damaged the petitioner's credibility and that 'drugs' were allegedly at the scene. But so what? None of these diversions, designed to distract the attention from its factual mission, could established the petitioner's guilt as a principle in this case.

Lets us examine the State's evidentiary house of cards (which the State claimed represented substantial circumstantial evidence of murder by the petitioner). See N, (State's Return to Petition For Writ of Certiorari, case No. 97-GS-40-25414, Supreme Court of South Carolina, submitted March 22, 2004, pp. 3-5):

1. Eyewitness (allegedly) saw al-Amin (the petitioner) dragging an object similar to the shape of a human body in a blanket (not evidence of murder by petitioner);

2. Eyewitness (some as in (1) found a body wrapped in a blanket in a dumpster (not evidence of murder by petitioner);

3. Repeats (2);

4. Dumpster is near petitioner's apartment (not evidence of murder by petitioner);

5. Petitioner's apartment had been cleaned and "processed" (not evidence of murder by petitioner). (But not mention by the State the alleged murder weapon was found in the petitioner's apartment. If the petitioner had known that this weapon exist because he had used it himself, he certainly would not have clumsily hidden it in his closet, He would have surely disposed of it during "processing");

6, 7 and 8. Human blood found inside the petitioner's apart (not evidence of murder by the petitioner). (Not mentioned by the State, the petitioner did not have multiple scratches on his face at the time of his arrest. He had only a single scratch. The State could never demonstrate that this was a defensive "wound," nor that this scratch could be connected to a struggle between him and the victim, nor was any of the petitioner's blood ever found at the scene nor on the victim's body.

9. The petitioner was the only resident of his apartment. (This is irrelevant, since the petitioner and the victim had multiple guests

on the day of the victim's death-in the petitioner's apartment - including, at least, Darryl Cunningham, Jerry Watkins and an unknown male "Frog?" never identified not to mention any visitors had while the petitioner and Cunningham was away from the apartment);

10. The petitioner's bed had no blanket or bedspread on it (hardly evidence of murder);

11. "Murder weapon" found in the petitioner's apartment (see also (5)). If the petitioner had actually known of the existence of the object -- a bolt -- as a murder weapon, (although the indictment State's "blunt trama... and/or manual strangulation' (alternative], the pathologist concluded the death was by strangulation) cf. State v. King, 158 S.C. 251, 155 S.E. 409 (1930), he certainly would not have clumsily hidden it in the apartment. He would have disposed of it,

12. "Weapon" said to be "consistent" with woulds on the victim's body (Does not prove murder by the petitioner.);

13. The petitioner left the day of the incident. (Of course he did. He was guilty of disposing of a dead body, but not of murder.);

14. The petitioner's face had a recent scratch[es] (see also (6)(7) and (8). There was only a single scratch, which was never connected to any struggle with the victim. Not mention by the State: The forensic evidence, gather by the State, demonstrated conclusively that the scraping taken from under the victim's fingernail did not match the petitioner's DNA.) (The police never attempted to ascertain the source of this damning DNA. Such investigation would have identified the real perpetrator.);

15. The petitioner made inconsistent statements about his scratch[es] (plural). There was only a single scratch, unassociated with the victim. In any event, it was not the petitioner's duty to disprove his guilt. Proof of guilt is a burden borned by the State. The state did not carry its proof because DNA evidence proved that there was no connection between the scratch and the victim.);

16. The petitioner was seen with the victim the day of the murder. So were multiple other males. See Tr. 650 at 4-11. The petitioner never denied that the victim was in his apartment when he left -- but ALIVE. [Corroborated by Cunningham];

17. The petitioner allegedly gave the victim "drugs" on the day of the murder. Even *if* he did, it would have been prior to him and Cunningham had left. More importantly, which was not substantiated by any *forensic evidence*, the victim was well-known as a "crack addict" who routinely accepted "drugs" or money to buy drugs, from anyone. This does not even *re*motely *suggest* murder.

b. The Police and its Investigation.

The petitioner's case was the produce of very shoddy police work -- rush to judgment. But even so, all of the forensic evidence allowed at trial *exonerated* the petitioner. Even the evidence *withheld* by the state *exonerated* the petitioner. But the jury was never permitted to hear the latter.

The petitioner's case represented a peculiar form of a serious *Brady* violation, which made it impossible for him to obtain Due Process through the vehicle of a fair trial. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). The police and the prosecution colluded to withhold critical evidence from the petitioner and the jury, and to subvert the truth-seeking process, by a devastating combination of:

a. Neglect
b. Obstruction, and
c. Distraction.

(a). The police utterly neglected to develope any comparative profile of evidence as to the petitioner, Darryl Cunningham, Jerry Watkins or any other males in the company of the victim on the day of the murder.

Neither the police nor the prosecution question the peculiar nature of Michael Watkins statement and subsequent testimony or his potential connection to the victim or Jerry Watkins (his brother) have a personal bias in this case? Were they in cahoots with James Conyers to eliminate the victim (as embarrassment to the Watkins family name), finding the petitioner - a new resident - a conveniet scapegoat? And where are Michael and Jerry Watkins at the time of the murder (they both had unlimited access to apartment 4, as manger and assistant manager? Why did Michael refuse to talk to the investigator for the petitioner's counsel? And why did he give inconsistent statement about a mysterious man name Frog, who have been the unidentified male in this drama?

The police neglected to pursue James Conyers as the most likely suspect, since he was the victim's live-in boyfriend, had quarreled with her on the day of her murder (to the extent that she sought refuge with the petitioner), and conveniently fled the scene "flight" immediatently after her murder. See Writ of Cert. App. 1238 line 14-18; App. 713 at 9-11. Even the police testimony at trial demonstrated that 'family' is the most unsual starting point for identifying a suspect in a case such as this.

The police neglected to gather any saliva or finger-print evidence, nor any toxicology evidence (documented).

The police neglected to gather any video evidence from the bank or the neighborhood store to establish a timeline for the petitioner (which would have exonerated him, in and of itself, and which was ready available).

In short, the police committed the functional equvalent of a serious Brady violation by failing to develop and disclose enough evidence to present a full picture to the jury and to allow the petitioner to develope and present a complete defense.

(b). The prosecution engage in a tactic of obstruction to prevent testimony from the defense which the prosecution falsely, characterized as "third party guilt" evidence when, in truth, it was no more than the petitioner's attempt to exonerate himself. Tr. 387-396. The petitioner's effort to present forensic sperm DNA evidence which cleared him of the victim was frustrated by the prosecution on the pretext that "This is not a sex case." But such a tactic runs afoul of the principle in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct 1727 (2006), which holds that a jury must not be compelled to view a case exclusively through the lens of the state's theory of the case. Thus, Due Process was thwarted. The victim was found in a sexual position and the state decided to take sperm DNA evidence, so the state must have suspected a sexual element to this case. But when this evidence exonerated the petitioner, it tightly guarded.

This obstructionism made a mockery of Brady by preventing the introduction of critical evidence, develope by the State, but which proved exculpatory for the petitioner.

(C). The State plugged the large holes in its case with the dust of distraction. Since the petitioner's defense was one of denial, this required him to take the stand -- because his trial counsel was ineffective for failing to interpose the valid trial strategy of Alibi, thus keeping him off the stand and requiring the state to prove his presence at the scene and requiring the State to prove his presence at the scene of the crime. See e.g., Roseboro v. State, 317 S.C.

292, 454 S.E.2d 312, 313 (1995) and State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959), grounded in the constitutional protection of reasonable doubt.

The prosecution then, without any determination by the court of the reason that the state could justify the petitioner's the introduction of prior conviction (Youthful Offender treatment, see Exhibit Q-1 - through Q-6), as means to impeach and sentence petitioner to life without parole statute proceeded to do so. See S.C. Code Ann. § 24-19-10(i)(ii). also Exhibit I, J, K and L. No probative value / prejudicial effect analysis ever occurred. The State argued on appeal that this information could be introduce under Rule 609(a)(2), because, in its opinion, armed robbery was a crime of dishonesty, and thus, automatically admissible to impeach the petitioner's credibility. See Rule 60(b)(1)(2)(3)(4), SCRCP.

No one at the appeals seemed to notice the State did not advance this arguement at trial, nor that armed robbery was not considered a crime of dishonesty at the time of the petitioner's trial. In the South Carolina Supreme Court decision in State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001), the Court made a fundamental distinction between larceny and armed robbery, in its view, lies that fact that armed robbery is a crime of violence, See S.C. Code § 16-1-10 (Supp. 2000), an offense against the person (taking by force or putting in fear by the use of firearms or other dangerous weapon).

In fact, the Court of Appeals, in it opinion, State v. Al-Amin, 353 S.C. 403, 414, 578 S.E. 2d 32, 37 (Ct. App. 2003), noted that this proposition by the State was of novel impression, but the Court never connected to dots to declare that under ex post facto analysis, it could only apply Al-Amin prospectively on this issue, and certainly not to petitioner himself. To do so would be to hold the petitioner to a legal standard not in existence at the time of his crime on trial. Secondly, the state improperly admitted petitioner's prior conviction that resulted to an error of law was not harmless. cf. State v. Frazier, 2005 WL 7084351 and State v. Benjamin, 2008 WL 9846586. Petitioner was sentenced to 3 to 6.

There was no physical evidence nor any testimonial evidence -- to link the petitioner to the crime scene or the victim's murder. As in State v. Turner, 117 S.C. 470, 109 S.E. 119 (1921) "His conduct after the homicide cannot convict him of an offense that the State failed to prove." "While the ... case raised a suspicion ... it did not warrant a verdict of guilt." State v. Epes, 209 S.C. 246, 39 S.E. 2d 769, 786 (1946).

The actual killer left the "murder bolt" behind intentionally. It was the only object which could conclusively connect him to the murder. He had

had to leave it, so not to be seen or caught with it -- and to serve the very useful purpose of setting the petitioner up as a convenient scapegoat. Its inevitable discovery would surely 'hang' the petitioner, since the petitioner would never know to look for it.

Since the petitioner's credibility was central in this case and there was no physical evidence and no identification evidence which established the petitioner as the murderer, this Court must be guided by Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142 (1988), in determining that he never enjoyed a meaningful opportunity to present a complete defense.

Moreover, particularity and critically absent from the State's case at trial (and also absent from trial counsel defense of the petitioner) was any evidence or discussion of whether the petitioner even could have physically committed this crime, given the position of the victim's wounds. Were they inflicted, for example, by a left-handed assailant or a right-handed assailant? And were the strangulation contusions consistent with the petitioner's hands?

Why did the state battle desperately to deflect evidence of an obvious sexual element? The victim's body was found in a sexual position. Fresh sperm was found in her vaginal vault - but not the petitioner's sperm. Why was no public hair evidence collected?

If collected evidence did not suit the State's theory of the case it was either withheld or petitioner's attempts to introduce it were frustrated and foiled.

The cumulative effect of the errors:

a. Misleading and irrelevant "evidence" presented by the State;
b. Exacerbated by the failure of the police to develop a complete picture of the evidence;
c. The failure of the Court to allow a complete defense to be presented;
d. The unrelenting campaign by the prosecution to subvert the truth-seeking process, and
e. The prosecution's strategy of distractions, and a subtitute for a real case for murder;

made it impossible for the petitioner to receive a fair, reliable trial. See Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985) and State v. Freeman, 319 S.C. 110, 459 S.E.2d 867 (1995). This cumulative effect constituted a constitutional violation under clear-established federal law.

~~The actual test for the reliability of a jury's verdict is whether the cumulative effect of all of the suppressed factual evidence, not the evidence consider piece by piece (item by item) was prejudicial. Kyles at 1558 and Bagley at 3380.~~

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Did all of the errors at trial undermine confidence in the trial? Would reasonable jurors have reached a different conclusion absent the accumulation of errors. The petitioner argues they would have. (The 4th Circuit has recognized that cumulative error may justify reversal. United States v. Martinez, 277 F. 3d 517, 532 (4th Cir. 2002) and United States v. Kerley 838 F. 2d 932, 937 (7th Cir. 1988), held that the cumulative effect of unobjected to errors is plain error were of such great impact that they probably changed the outcome of the trial.

In the Fourth Circuit a claim of actual innocence "must be found upon factual innocence." Quite naturally, from factual innocence flows legal innocence. United States v. Mikalajunas, 186 F. 3d 490, 493 (4th Cir. 1999).

The petitioner herein is actual innocent of murder as a principal (with which he was charged). There was, in truth, no substantial evidence of murder by the petitioner, only of accessory after the fact to support a murder conviction, in violation of the federal law.

Clearly-established federal law, as announced by our United States Supreme Court, requires that

State furnish unambigious due process and that the accused have effective assistance of counsel. The petit-tioner herein has furnished a plethora of evidence, which clearly demonstrates an unreasonable application of federal law in this case.

1. Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 2645, 2648-49, ineffective assistance of counsel ... is a cause for procedural default (including ineffective assistance of appellate counsel(s) by implication, since the test in Strickland v. Washington, 106 S.Ct. 2052 (1984), applies to both kinds of counsel, trial and appellate). "The Habeas petitioner must show "not" merely the errors at trial created a possibility of prejudice, but that worked to his actual and substantial disadvantage, infecting the entire trial with error of constitutional dimension, citing United States v. Frady, 102 S.Ct. 1584, 1596 (1986).

"The due process clause protect the accused against convictions except upon proof beyond reasonable doubt of every fact necessary to contitute the crime with which he is charged."

"The principle which informs the concept of and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration."

"A federal court may grant the writ even in the absence of a showing of the procedural default."

2. Smith v. Murry, 477 U.S. 527, 106 S.Ct. 2661, 2667

(1986): Carrier reaffirmed that "the right to effective assistance of counsel ... may, in a particular case, be even an isolated error ... if the error is sufficiently egregious and prejudicial. Id. 106 S.Ct. at 2650 and United States v. Cronic, 106 S.Ct. 2039 (1984).

3. Sawyer v. Whitley, 112 S.Ct. 2514 (1992) "To ensure that a miscarriage of justice does not occur."

4. House v. Bell, 126 S.Ct. 2064 (2006) This case strikingly similar to the petitioner's case, furnishes a gateway to habeas relief through an evidentiary hearing.

5. Schlup v. Delo, 115 S.Ct. 857 (1995) and House, supra, hold that a conviction can be reliable only if it is based on a fully-develop record. See also Marshall v. Lonberger, 103 S.Ct. 843 (1983), and with respect to that inquiry Schlup make plain that the Habeas Court must consider "all the evidence," old and new. See e.g., Wakeel Rasheed's frank confession of the murder of Eliabeth Pryor, the victim herein, at the petitioner's PCR hearing, without regard to whether it would necessarily be admitted under the local rules of evidence. Schlup at 851. Based on this total record the Habeas Court must make "a probabilistic determination "about how reasonable, properly-instructed 'jurors would reach to a new, overall record to Schlup also at 851,

In Wiggins v. Smith, 123 S.Ct. 2527, 2543 (2003), the Supreme Court, likewise, held that the

REASONS FOR GRANTING THE PETITION

The Due Process Clause of the Fourteenth Amendment, the Confrontation Clause and the Compulsory Process of the Sixth Amendment, the United States Constitution guarantees every defendant a right to a meaningful opportunity to present a complete defense. The trial Court and the prosecution denied Petitioner that protected opportunity and Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006). should be applied retroactivily.

In regards to Petitioner's newly discovered evidence of the Confession from the actual Killer, Petitioner did not receive a full and fair evidentiary hearing, which included an appeal on that denial - a federal evidentiary hearing is required [Young v. Ragen, 337 U.S. 235 (1949); Case v. State v. Nebraska, 381 U.S. 336 (1965) and Martinez v. Ryan, 566 U.S. 1 (2012)].

The petitioner has made several attempts to get the highest state court to correct and grant him an appropriate vindication of his ineffective assistance counsel - a federal right. Elizabeth Franklin-Best, was an state agent who fail to raise claims raised at his initial PCR and the State Court except Best ineffectiveness as a state procedural default, by which the state of South Carolina has committed a miscarriage of justice here. The trial was not free of constitutional error, and the petitioner's evidence of innocence is so strong that this Court cannot have confidence in the outcome of the trial. The Petitioner should be allowed to pass through the gateway and have the merits of his underlying claims of ineffective assistance of counsel and new evidence reviewed on its merits.

CONCLUSION

The petition ~~for a writ~~ of certiorari should be granted.

Respectfully submitted,

Date: September 20, 2021