No. 21-7603

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

GLEN S. EVANS, PETITIONER

vs.

BILL STANGE, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Glen S. Evans #1268296
Potosi Correctional Center
11593 State Highway O
Mineral Point, MO 63660
573-438-6000

Petitioner, pro se

QUESTIONS PRESENTED

1. Where the trial court has erred and abused its discretion in overruling defendant's motion to suppress his statements to police, and in admitting that evidence at trial over counsel's objection, and by their own admission the officers did not stop defendant on reasonable suspicion or probable cause that he had committed a crime, and thus, defendant's statements under interrogation were both the "fruit of the poisonous tree" and the only evidence supporting a finding of second degree murder, so that a manifest injustice resulted therefrom. Has prejudice been shown?

2. Where the trial court has erred and abused its discretion in overruling defendant's motion for judgment of acquittal at the close of the evidence, and in pronouncing judgment and sentence against him for second degree murder upon the jury's verdict, because there was insufficient evidence to prove beyond a reasonable doubt the essential element of the crime that defendant believed Matthew Cook intended to kill Sean Crow nor that it was a likely result of driving Cook to Advance, Missouri. Has prejudice been shown?

3. Where defense counsel fails to investigate and call a favorable witness to testify, as defendant's codefendant, Matthew Cook had made statements during a police interview that exonerated defendant of any knowledge and/or fault. Has prejudice been shown?

LIST OF PARTIES

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

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IN THE

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at Case No. 22-1085

The opinion of the United States District Court appears at Appendix B to the petition and is reported at Case No. 4:20-CV-00097-SRC

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 4, 2022. See Appendix A

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part, that "the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures."

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that "No State shall ... deprive any person of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution provides, in relevant part, that "No person shall be denied the right to legal counsel in any criminal proceeding, and the effective assistance of legal counsel."

STATEMENT OF THE CASE

This Petition For A Writ Of Certiorari consists of three (3) Grounds for relief. The included documents will be Appendix A, Appendix B, and Appendix C.

GROUND ONE

The trial court erred in overruling Petitioner, Glen Evans' motion to suppress his statements to police, and in admitting that evidence at trial over counsel's objection, in violation of Petitioner's rights to due process of law, and to be free from unreasonable search and seizure, as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 15 and 18(a) of the Missouri Constitution, in that by their own admission, the officers did not stop Evans on reasonable suspicion or probable cause that he had committed a crime, and Evans' statements under interrogation were both the "fruit of the poisonous tree" and the only evidence supporting a finding of second degree murder, so that Petitioner was prejudiced and a manifest injustice resulted therefrom.

FACTS IN SUPPORT

In this case, Trooper Steve Jarrell (Jarrell) had the right to approach Petitioner, Glen Evans (Evans) and seek an interview with him. State v. Carr, No. 76623 (Mo.App.W.D. September 9, 2014, slip op. at 5). In such a case, however, "[a]bsent special circumstances, the person approached may not be detained or frisked, but may refuse to cooperate and go on his way." Id., citing Terry v. Ohio, 392 U.S. 1, 34 (1968) (White concurring). Here, Evans chose to "go on his way" by running from his house, and he had the right to do so. Jarrell had no authority to pursue and stop him.

The issue becomes whether the seizure was reasonable for Fourth Amendment purposes. Under the principles set out in Terry, "'where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot ...,' the officer may briefly stop the suspicious person and make 'reasonable inquiries' aimed at confirming or dispelling his suspicions." Minnesota v. Dickerson, 508 U.S. 366, 373 (1993), quoting Terry, 392 U.S. at 30.

A suspicion is reasonable when, in light of the totality of the circumstances, the officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry, 392 U.S. at 21; see also United States v.

Cortez, 449 U.S. 411, 417 (1981)("[T]he detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity").

In this case, Trooper Steve Jarrell testified he came to speak with Evans after learning that Evans was a "potential Witness" (Tr.11). Therefore, Jarrell had no authority to stop Evans at the time he chased Evans down and apprehended him. The apprehension was a violation of Evans' Fourth Amendment constitutional rights.

The normal rule is that "all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in state court." Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 86 Ohio Law Abs. 513 (1961). Application of this exclusionary rule extends beyond the direct product of a constitutional illegality. It also requires exclusion of the "fruit of the poisonous tree," that is, "evidence discovered and later found to be derivative of a Fourth Amendment violation." State v. Miller, 894 S.W.2d 649, 654 (Mo.banc 1995). Although this exclusionary principle is driven by dual "considerations of deterrence and of judicial integrity," Brown v. Illinois, 422 U.S. 590, 600 (1975), the deterrence rationale is paramount: "The rule is calculated to prevent, not repair. Its purpose is to deter--to compel respect for the constitutional guaranty in the only effectively available way--by removing the incentive to disregard it." Elkins v.

United States, 364 U.S. 206, 217 (1960).

In this case, the authorities chased and stopped Evans when he ran from his home as they came to speak with him upon learning that he was a "potential witness" (Tr.11). When Evans ran away, Trooper Steve Jarrell chased and threatened to shoot him (Tr.13). Evans was forcibly taken to the police station and eventually gave a statement (St.Ex.8). As the authorities by their own admission had no legal grounds to stop Evans, his statement should have been suppressed. Because Evans' statement was the major evidence against him, its admission was plain error.

Evans moved to suppress his statements on the ground, inter alia, that there was no reasonable suspicion to detain him (L.F.29-30). He objected to the statement at trial (Tr.29-32). The fruit of the poisonous tree doctrine holds that evidence obtained as a result of an illegal seizure should be suppressed. Miller, 894 S.W.2d at 656-57; Wong Sun v. United States, 371 U.S. 471 (1963). The issuance of **Miranda** warnings did not remove the taint from a statement obtained through exploitation of the illegal arrest. Brown v. Illinois, 422 U.S. 590 (1975).

In State v. Hicks, 515 S.W.2d 518 (Mo.1974), the victim was found dead in her kitchen. Id. at 519. Hicks was arrested for the murder and police seized property from his pockets as "an inventory search" pursuant to that arrest. Id. at 520. The

State attempted to justify the search on several grounds, including that the defendant had become excited, struggling apparently in an attempt to flee when the police told him they would like to ask him some questions concerning the victim's death. Id. at 520-21. The Missouri Supreme Court reversed Hicks' conviction, holding that the items seized from Hicks should have been suppressed as the fruit of an illegal arrest. Id. at 522. The resistance and other factors in the case were insufficient to justify his arrest; "[t]hey would give rise to nothing more than the barest suspicion of appellant's connection with the crime. The requirement of probable cause can never be satisfied with a bare suspicion of guilt." Id.

In this case, the officers had less to go on than the authorities in **Hicks**. They had no inkling that Evans was anything more than a possible witness. Yet they chased after him and even threatened to shoot him (Tr.13). This violated Evans' Fourth Amendment rights, and the statement was obtained by exploiting that violation, and it should have been excluded.

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause." Generally, a search or seizure is allowed only if the police have probable cause to believe the person has committed or is committing a crime.

Beck v. Ohio, 379 U.S. 89, 91 (1964).

The Fourth Amendment also authorizes a so-called **Terry** stop, which is a minimally intrusive form of seizure or "semi-arrest" that is lawful if the police officer has a reasonable suspicion supported by articulable facts that those stopped are engaged in criminal activity. Terry v. Ohio, 392 U.S. 1 (1968); State v. Miller, 894 S.W.2d 649, 651 (Mo.banc 1995). Reasonable suspicion must be based upon a specific, articulable set of facts indicating that criminal activity is afoot. United States v. Sokolow, 490 U.S. 1, 7 (1989).

In this case, the question is whether at the moment of the arrest, the facts and circumstances within the officers' knowledge and of which they had reasonable trustworthy information was sufficient to warrant a prudent man in believing that Evans was implicated in the murder of Sean Crow (Crow). Beck v. Ohio, 379 U.S. at 91. Here, those facts and circumstances were insufficient, and the officers did not suggest otherwise. The motion to suppress challenged the statement on Fourth Amendment grounds (L.F.29-30), but the officers did not pretend that they had any evidence that Evans was criminally responsible for Crow's death. By Jarrell's own admission, he only wanted to interview with Evans as a witness, surmising that perhaps Matthew Cook (Cook) mentioned him (Tr.14).

Insofar as the State was required to prove that Evans intended for Cook to shoot Crow when he drove him to Advance (L.F.68); it is highly unlikely that the State could even make it to the jury if the trial court had suppressed his statements. It is also highly unlikely that the jury would have convicted Evans upon the sole evidence that he drove Cook to Advance and was with him afterward, when there was no motive for Evans to want to see Crow killed, and no showing of what Evans knew and when regarding Cook's intent to shoot Crow.

For this reason, Petitioner respectfully requests that this Court reverse his conviction and sentence, and remand this cause for a new and fair trial with all references to his statement suppressed.

GROUND TWO

The trial court erred in overruling Petitioner, Glen Evans' motion for judgment of acquittal at the close of the evidence and in pronouncing judgment and sentence against him for second degree murder upon the jury's verdict, in violation of Evans' right to due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 10 of the Missouri Constitution, in that there was insufficient evidence to prove beyond a reasonable doubt the essential element of the crime, that Evans had the purpose of promoting second degree murder, as there was no evidence that Evans believed that Matthew Cook intended to kill Sean Crow nor that it was likely a result of driving Cook to Advance, Missouri.

FACTS IN SUPPORT

In this case, insofar as Petitioner, Glen Evans (Evans) did not shoot Sean Crow (Crow), the State charged him as acting together with Matthew Cook (Cook) (L.F. 51-52). Section 562.036 provides that a person with the required culpable mental state is guilty of conduct of another for which he is criminally responsible. Pursuant to § 562.041.1(2), a person is criminally responsible for another's conduct when "[e]ither before or during the offense with the purpose of promoting the commission of an offense, he aids or agrees to aid or attempts to aid such other person in planning, committing, or attempting to commit the offense."

The evidence, consisting of surveillance videos, Evans' friends' testimony, and Evans' statement to the authorities, was insufficient to prove beyond a reasonable doubt that Evans took Cook to Advance with the intent to facilitate Crow's murder. Evans told authorities that he thought there might be a "pistol-whipping" or fight, but did not anticipate that Cook would actually kill Crow (St.Ex. 8, III, 19:20). He saw a gun, but did not believe that a .22 was a lethal weapon; a belief shared by Brent Montgomery (Montgomery) (St.Ex. 8, II, 25:49, Tr.444). There was no evidence that Evans drove Cook to Advance with the intent to promote a murder.

The statutory requirements for the jury to find Evans guilty were outlined in Instruction No. 7, the verdict director for second degree murder (L.F. 68). That Instruction required the jury to find that Cook intentionally shot and killed Crow (L.F. 68). Paragraph 3 further required the jury to find:

> Third, that with the purpose of promoting or furthering the commission of that Murder in the Second Degree, the defendant Glenn Scott Evans aided or encouraged Matthew Cook in committing the offense...

(L.F. 68).

To obtain a finding of guilt, the state was required to prove that Evans drove Cook to Advance "with the purpose of promoting or furthering the commission" of second degree murder. The evidence **must** prove intent. Bare suspicion that Evans may have had or, that his conduct might facilitate an offense, is an insufficient basis to invoke accomplice liability. State v. Barker, No. 76764 (Mo.App.W.D. September 16, 2014), slip op. at 17. The Court cannot infer criminal intent from circumstances that **could** give rise to a suspicion that a person will be committing a crime. Id., slip op. at 14.

In Barker, the court held that a woman who restored her husband's computer after it crashed, after having seen and removed child pornography that he accessed six months previously, was not guilty of aiding and abetting his subsequent possession of child pornography. The fact that the

defendant might have suspected that her husband was still accessing child pornography did not prove an intent to promote the offense.

The court in Barker relied in part upon Douglas v. State, 410 S.W.3d 290, 293-94 (Mo.App.E.D.2013). In Douglas, the defendant had pleaded guilty to second degree murder, acknowledging at the plea hearing that his codefendant had picked him up; that the defendant drove the vehicle around; that he learned that his codefendant had a handgun; that he followed his codefendant's directions as to where to drive; and that while the vehicle was stopped at a stop sign, his codefendant fired the handgun at some people sitting on a front porch. Id. The defendant indicated that he did not know in advance what his codefendant was going to do, but while he was driving, he did figure out that the codefendant was likely intending to avenge a friend's killing. Id. at 294-95.

The Court found that this evidence did not give rise to accomplice liability, for the defendant did not admit that he drove the vehicle "knowing that the purpose of driving the vehicle was for Smith to commit the crime." Id. at 298. Here, likewise, Evans did not admit that he knew a murder was contemplated, and there is no other evidence suggestive of such knowledge. The Court cannot "infer criminal intent not from knowledge that a crime is or will be committed, but from inferred knowledge that a crime is or will be committed." Barker, slip op. at 14.

In this case, throughout his interrogation, and throughout his trial testimony, Evans steadfastly denied any prior knowledge that Cook intended to kill Crow. Evans did acknowledge that Cook said something to the effect that "I'm gonna kill him," but in a manner that Evans did not take to be a threat--and understandably so, as his experience was that this was a common threat that, in his experience was never carried out (St.Ex.8, III, 22:06).

The jury was not required to credit Evans' explanations, but even so, "[s]imply because a defendant's self-serving statements may not be credible, does not give the jury license to speculate on what happened when there is nothing else to go on." State v. O'Brien, 857 S.W.2d 212, 220 (Mo.banc 1993). Here, there was nothing else to go on.

In closing, the State had no direct evidence to point to, so it made much of Evans' statement that he saw Cook with a gun (Tr.800). From the interrogation it is unclear as to when Evans first saw the gun (St.Ex.8, II, 19:10, 23:41). Evans did state that he knew that Cook had some business to take care of and Cook had a pistol, but Evans was not asked at what point he saw the pistol (St.Ex.8, IV, 2:12). At trial, Evans testified that he first saw the gun when Cook got out of the car at McDonald's (Tr.634).

Regardless of when Evans did not believe that Cook could kill someone with a .22, until Cook explained that a .22 could

kill someone by shooting them in the eye (St.Ex.8, III, 25:48). This fact was also news to Montgomery who also did not consider a .22 to be a lethal weapon (Tr.444). Evans believed that shooting someone with a .22 was like a "slap" (St.Ex.8, II, 27:32); even if he saw the gun earlier, there was no evidence he believed Cook could or would kill Crow with it.

The State also capitalized on the surveillance videos that showed Evans waiting on the parking lot for several minutes and then pulling behind McDonald's after the lot was clear (Tr.772). However, if Evans proceeded in trying to avoid detection, as opposed to simply following Cook's directions, this does not prove an intent to facilitate Crow's murder, as opposed to the kind of confrontation that Evans had apparently contemplated; a "pistol-whipping" or "fight" (St.Ex.8, III, 7:40). The evidence on the surveillance tapes is as consistent with a "pistol-whipping" or "fight" as with murder. Evasive action does not prove a defendant's guilty knowledge regarding a particular crime in comparison to other possible bad acts. See State v. Schwartz, 899 S.W.2d 140, 145 (Mo.App.S.D.1995)(the defendant's flight from scene).

In this case, the State further argued that Evans had a motive for wanting Crow killed, because of Crow's relationship with Nikki Evans (Nikki), Petitioner's ex-wife. This argument lacks evidentiary support, because Nikki testified that she never told Evans about the relationship (Tr.323); the relationship was short-term and over at the time of the

incident (Tr.318); the evidence suggested that Crow was not the person with whom Nikki had the affair while married to Evans (Tr.318, 747); and Evans was involved with someone else before, during, and after Nikki's relationship with Crow (Tr.318, 389). To suggest that Evans wanted to kill Crow because of a former relationship with an ex-wife is to engage in mere speculation. See State v. Whalen, 49 S.W.3d 181, 184 (Mo.banc 2001).

In this case, as the State argued that Evans allowed Cook to stay with him for several days after the incident (Tr.397-407), Evans testified that he took Cook home as soon as possible, and Cook was the one who came over to Evans' house, not having a place to stay (Tr.649). While Evans did drive Cook (who was still armed) back to Dexter, he did not continue in any enterprise, such as getting rid of evidence with Cook. Evans agreed to Cook's request for a place to stay, but that was it. Evans' subsequent acts do not suggest that there was a plan to act together to commit an offense. Evans was not acting together with Cook; Cook was in fact acting on his own accord, and the evidence did not show anymore than the fact that Evans was giving a friend a ride, and the State failed to offer a motive on Evans' part. There was no evidence that Evans contemplated that Cook would kill Crow, nor that Evans was criminally responsible for Cook's actions.

For this reason, Petitioner respectfully requests that this Court reverse his conviction and sentence, and remand this cause for a new and fair trial.

GROUND THREE

Trial counsel, James McClellan was ineffective by failing to investigate, and failing to call a favorable witness to testify, in violation of Petitioner's rights to due process of law, and to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution, in that Petitioner, Glen Evans' codefendant, Matthew Cook had made statements during a police interview that exonerated Evans of any knowledge and/or fault. Counsel's failure fell below an objective standard of reasonableness, and constituted ineffective assistance of counsel, and was prejudicial to Petitioner.

FACTS IN SUPPORT

In this case, codefendant, Matthew Cook (Cook) testified at the evidentiary hearing that Petitioner, Glen Evans (Evans) had absolutely no knowledge about his intentions (Evid.Tr.13-15). Cook further testified that he did not formulate his intent until after he had exited the vehicle that Evans was driving, and that he "just wanted a face-to-face with (the victim)" Sean Crow (Crow) (Evid.Tr.23-27). Cook testified that Evans had no knowledge of who he was planning to meet in Advance, Missouri, and Cook never told him because it was none of his business (Evid.Tr.14-15; 28-29). Finally, Cook testified that after the shooting, he did tell Evans that he had shot someone, but he did not tell Evans the identity of the victim (Evid.Tr.14-16).

On cross-examination, Cook contradicted his earlier testimony when he had claimed he would have testified on behalf of Evans, and instead, stated that if he was facing the death penalty, which he was initially after he had been charged, he probably would not have testified (Evid.Tr.16-18). However, Cook also testified that had he been able to secure a plea bargain, he would have testified for Evans in his criminal trial (Evid.Tr.28-29). Cook did in fact secure a plea bargain,

plead guilty, and avoided the death penalty.[2] The only basis the motion court cited for determining that Cook's testimony that he would have testified was not credible, was that it was not believable that a defendant would testify at a time in which the State was seeking the death penalty. Thus, had counsel attempted to contact Cook prior to the trial, counsel would have been able to determine that Cook would have testified favorably for Evans, once he was able to secure a plea bargain with the State and avoid the death penalty.

Counsel made no attempt whatsoever to contact either Cook or his attorney, to interview Cook to determine what had happened or to ascertain if he would be willing to testify for Evans at his criminal trial (Evid.Tr.57). Counsel claimed that he did not interview, depose, or attempt to depose Cook (Id). Counsel also made no investigative efforts to determine if Cook had made any out-of-court statements about what had happened the night of the murder that could be favorable for the Defense (Evid.Tr.56-57; 59-61). Counsel simply concluded, out-of-hand, that Cook would not be a viable witness, without any investigation, and failed to ascertain the probable circumstances in which Cook would have testified favorably as a result. This was not the result of any trial strategy.

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[2]Matthew Cook pleaded guilty to Murder 1st Degree on December 8, 2014, and received a sentence of life without parole, per Cause No. 13SD-CR00324-02 State v. Matthew B. Cook.

Rather, this was simply counsel's failure to make a minimum effort to determine if Cook would have been a viable witness.

There is a reasonable probability that, but for counsel's failure to investigate the possible testimony of Matthew Cook; to call him as a favorable witness, and to alternatively introduce Cook's recorded statements into evidence, in the event that Cook refused to testify, the outcome of Evans' trial would have been different.

Counsel has "a duty to pursue [defendant's] alibi defense and to investigate all witnesses who allegedly possessed knowledge concerning [defendant's] guilt or innocence." Lawrence v. Armontrout, 900 F.2d 127, 130 (8th Cir. 1990) (citing Eldridge v. Atkins, 665 F.2d 228, 236 (8th Cir. 1981)). See also, Blackburn v. Foltz, 828 F.2d 1177, 1183 (6th Cir. 1987)(counsel's failure "to investigate a known and potentially important alibi witness" was ineffective assistance where "counsel did not make any attempt to investigate this known lead, nor did he make a reasoned professional judgment that for some reason investigation was not necessary"); Bruce v. United States, 256 F.3d 592 (7th Cir. 2001)(remanding for a hearing to determine whether counsel was ineffective for failing to investigate and call two alibi witnesses who would have exonerated defendant of involvement in armed robberies); Grooms v. Solem, 923 F.2d 88, 90 (8th Cir. 1991)("it is unreasonable not to make some effort to contact [alibi witnesses] to

ascertain whether their testimony would aid the defense"); Towns v. Smith, 395 F.3d 251, 259 (6th Cir. 2005)(ineffective assistance where counsel "made absolutely no attempt" to communicate with crucial witness that would have testified that defendant did not commit crime); Tosh v. Lockhart, 879 F.2d 412 (8th Cir. 1989)(counsel's failure to call alibi witnesses was ineffective assistance where attorney believed witnesses' testimony was important but failed to procure it).

In this case, in particular, evidence was adduced at the evidentiary hearing that Evans' codefendant, Matthew Cook had made statements during a police interview that exonerated Evans of any fault. In addition, evidence was adduced that counsel had received a copy of a recording of this interview as a part of the State's disclosure to Evans. Evidence was also adduced that counsel never discussed this evidence with Evans; never made this evidence available to Evans, and was otherwise unaware that this evidence had been disclosed by the State (Evid.Tr.57-58). Finally, the record is undisputed that counsel did not introduce this evidence at trial (Id). The record also contains no evidence that counsel declined to introduce this evidence as some trial strategy. Rather, counsel was simply unaware of the existence of the recording and failed to introduce this evidence at trial because of his failure to prepare. The evidence demonstrates that counsel failed to discover Cook's audio recording; that a required

review of the evidence disclosed by the State would have resulted in his discovery of this exculpatory evidence; and that this discovery would have improved Evans' position at trial.

Therefore, as a matter of law, counsel's failure to review all of the evidence disclosed by the State in this case constituted ineffective assistance of counsel. In addition, as a matter of law, counsel's failure to introduce exculpatory evidence for reasons other than trial strategy also constituted ineffective assistance of counsel. Had counsel made the evidence available to Evans and had counsel reviewed the evidence with Evans prior to trial, counsel would have been aware of the recording of Cook's statements and certainly would have introduced that evidence at trial, in the event Cook invoked his 5th Amendment right to not testify.

There is a reasonable probability that, but for counsel's failure to investigate the possible testimony of Matthew Cook; to call him as a favorable witness, and to alternatively introduce Cook's recorded statements into evidence at trial, in the event that Cook refused to testify, the outcome of Evans' trial would have been different. The central issue in the criminal case was Evans' knowledge or lack of knowledge about the intentions of Cook. Cook's testimony at the motion hearing was consistent with his statements made to police during the recorded interview, as they exonerated Evans and implicated

Cook as acting alone in the murder of Sean Crow. Specifically, Cook testified at the evidentiary hearing that Evans had absolutely no knowledge about his intentions (Evid.Tr.13-15). Cook further testified that he did not formulate his intent until after he had exited the vehicle that Evans was driving, and that he "just wanted a face-to-face with (the victim)" Sean Crow (Evid.Tr.23-27). Cook testified that Evans had no knowledge of who he was planning to meet in Advance, Missouri, and that he never told Evans because it was none of his business (Evid.Tr.14-15; 28-29). Cook testified that after the shooting, he did tell Evans that he had shot someone, but did not tell Evans the identity of the victim (Evid.Tr.14-16). The complete omission on the part of counsel to attempt to introduce this vital evidence "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 687-88.

For this reason, Petitioner respectfully requests that this Court reverse his conviction and sentence, and remand this cause for a new and fair trial.

REASONS FOR GRANTING THE PETITION

As to Ground One, the normal rule is that "all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in state court." Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 86 Ohio Law Abs. 513 (1961). Application of this exclusionary rule extends beyond the direct product of a constitutional illegality. It also requires exclusion of the "fruit of the poisonous tree," that is, "evidence discovered and later found to be derivative of a Fourth Amendment violation." State v. Miller, 894 S.W.2d 649, 654 (Mo. banc 1995).

As to Ground Two, the State was required to prove that Petitioner could have reasonably anticipated that Matthew Cook would kill Sean Crow. However, there was no such evidence presented by the State to suggest that Petitioner had any knowledge whatsoever about Cook's intentions. To confirm this fact, Cook testified that he did not formulate his intent until after he had exited the vehicle that Evans was driving (Evid. Tr. 23-27). Cook further testified that Petitioner, Evans had no knowledge of who he was planning to meet (Evid.Tr. 14-15, 28-29). Finally, Cook testified that after the shooting, he did tell Evans that he had shot someone, but he did not tell Evans the identity of the victim (Evid.Tr. 14-16).

As a matter of due process, the State is required to adduce affirmative evidence to support every element of the charge. In re Winship, 397 U.S. 358, 364 (1970). Here, however, the State failed to adduce any such affirmative evidence to support the elements of murder in the second degree under accomplice-liability. § 562.041 R.S.Mo. Furthermore, there was no such evidence presented by the State to suggest that Petitioner aided or encouraged Matthew Cook in committing the offense. To hold one liable for the acts of another, that individual must have acted with or aided before or during the crime with the purpose of promoting that offense. See § 562.041.1(2).

The legal and logical issues in Douglas v. State, 410 S.W.3d 290 (Mo.App.E.D. 2013) are very similar to the issues in the case at bar. In Douglas the court found that this evidence did not give rise to accomplice liability, for the defendant did not admit that he drove the vehicle "knowing that the purpose of driving the vehicle was for Smith to commit the crime." Id. at 298. Here, likewise, Petitioner did not admit that he knew a murder was contemplated, and there is no evidence suggestive of any such knowledge.

Furthermore, Petitioner, Evans was charged with acting with Matthew Cook in committing this offense. § 562.041. Accordingly, to be guilty of murder in the second degree, in addition to the elements of that crime, in which Cook committed,

the State would need to show that Evans aided or encouraged Cook with the purpose of Committing the charged crime, and acted with the purpose of promoting or furthering Cook's actions in committing the crime of murder in the second degree. See § 562.041 R.S.Mo; MAI-CR3d 314.04.

As to Ground Three, counsel simply failed to investigate, interview, depose, or make any such attempts, and failed to ascertain the probable circumstances in which Matthew Cook would have testified favorably as a result. This was not the result of trial strategy. Rather, this was the complete omission on the part of counsel to attempt to introduce this vital evidence. Counsel's failure "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

CONCLUSION

WHEREFORE, Petitioner, Glen S. Evans prays for relief, and respectfully requests of this Court to grant his writ petition, and vacate his conviction and sentence, and remand the case for a new and fair trial or, as an alternative, remand for an evidentiary hearing.

Respectfully submitted,

Glen S. Evans

Glen S. Evans

Date: 04/04/2022