22-5207

No. 21A716

ORIGINAL

FILED
JUL 18 2022
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In re Brandon L. Cooper — PETITIONER
(Your Name)

vs.

Bobby Lumpkin, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brandon L. Cooper
(Your Name)

1800 Luther Dr.
(Address)

Navasota, TX 77868
(City, State, Zip Code)

936-825-7548
(Phone Number)

QUESTION(S) PRESENTED

One: Whether Petitioner presented a substantial showing of newly discovered factual actual innocence in this case? The lower court's decision was based on an unreasonable determination of facts enlight of the evidence presented.

Two: Whether Petitioner presented a substantial showing of the denial of his Fourth, Fifth, Sixth and Fourteenth Amendment rights that resulted in a gross and grave miscarriage of justice in the conviction? The decision of the lower court's is in conflict with clearly established federal law as determined by the Supreme Court of the United States.

Three: Whether the United States Court of Appeals for the Fifth Circuit entered a decision in conflict with previous or relevant decisions in Miller-El v. Cockrell, 123 S. Ct. 1029 (2003), McQuiggin v. Perkins, 569 U.S. 383, 386 (2013), House v. Bell, 547 U.S. 518 (2006), Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 2649, 91 L. Ed. 2d 397, 413 (1986), Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), and Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867, 130 L. Ed. 2d 808, 836 (1995)? The decision of the lower courts is in conflict with clearly established federal law as determined by the Supreme Court of the United States. The lower court's decision was based on an unreasonable determination of facts enlight of the evidence presented.

No. 21A716

In The

Supreme Court of the United States

In re Brandon L. Cooper Petitioner(s)

VS.

Bobby Lumpkin, Director Respondent(s)

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the
Fifth Circuit
No. 21-40433

Petition For Writ Of Certiorari

Brandon L. Cooper, pro se
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Question (s) Presented

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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

Brandon Lawerance Cooper v. The State of Texas, No 401-81168-2011. Judgment entered (found guilty on 1-25-12; Sentenced on 6-15-12).

Brandon Lawerance Cooper v. The State of Texas, No. 05-12-00898-CR, Court of Appeals for the Fifth District of Texas at Dallas; Judgment entered June 11, 2014.

Ex parte Brandon Lawerance Cooper v. The State of Texas, Tr. Ct. No. W401-81168-2011 HC, WR 91,804-01; Judgment entered January 6, 2021, 401 District Court of Collin County, Texas, Court of Criminal Appeals of Texas.

Brandon L. Cooper v. Director, TDCJ-CID, Case No. 4:21-CV-00114, U.S. District Court for the Eastern District of Texas; Judgment entered May 19, 2021.

Brandon L. Cooper v. Bobby Lumpkin, No. 21-40433, U.S. Court of Appeals for the Fifth Circuit; Judgment entered Feburary 2, 2022.

Table Of Contents

Index To Appendixes

Table Of Authorities

Cases — **Page**

Statutes and Rules

No. 21A716

In The

Supreme Court of the United States

In re Brandon L. Cooper Petitioner(s)

VS.

Bobby Lumpkin, Director Respondent(s)

Memorandum Of Law
In Support Of
Writ Of Certiorari
Brief On The Merits

To the Honorable Justices of said Court:

Now Comes, Petitioner, Brandon L. Cooper, #1797873 in the above-entitled case and makes this Memorandum Of Law in support of this application for a Writ Of Certiorari, said application which was filed with this memorandum is to direct this Court to the corresponding authorities concerning the claims and issues presented in this application. In support thereof Petitioner will present the following:

Summary of the Argument

This Writ of Certiorari concerns the issues of whether Mr. Brandon Lawerance Cooper presented a substantial showing of factual actual innocence in this case, a denial of his fourth, fifth, sixth and fourteenth amendment rights that resulted in a miscarriage of justice in the conviction, and whether the United States Court of Appeals entered a decision in conflict with previous or relevant decisions of its own court and of this Court.

Standard Of Review

In Murray v. Carrier, 477 U.S 478, 496, 106 S.Ct. 2639, 2649, 91 L.Ed 2d 397, 413 (1986), the Court first stated the standard for a fundamental miscarriage of justice and said a prisoner must show "a constitutional violation has probably resulted in the conviction of one who is actually innocent" in order to meet the fundametal miscarriage of justice exception. In Schlup v. Delo, 513 U.S 298, 327, 115 S.Ct. 851, 867, 130 L.Ed. 2d 808, 836 (1995), the Court explained that this standard requires the defendant to "show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt" if the constitutional error had not occurred. In House v. Bell, 547 U.S. 518, 539, 126 S.Ct. 2064, 2078, 165 L.Ed. 2d 1, 22-23 (2006), the Supreme Court determined that AEDPA's higher standard of review does not apply in cases where there is a claim of actual innocence. Also see Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979). However, if habeas petitioner presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial, unless the court is also satisfied that the trial was free of nonharmless constitutional error, petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims in a habeas petition.

In McQuiggin v. Perkins, 569 U.S. 383, 386 (2013), the Supreme Court has held that "actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar or the expiration of the statue of limitations". In Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the Supreme Court diverted its focus from the conduct of the prosecutor and instead directed it to the fairness of the proceedings to the defendant. The Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates Due Process where the evidence is material either to guilt or the punishment irrespective of the good faith or bad faith of the prosecution". Id., at 87, 83 S. Ct. at 1196. The Supreme Court noted initially that the rule of Brady v. Maryland, supra was based on the requirement of due process, and its overiding purpose was to insure that a defendant recieves a fair trial by requiring the prosecution to disclose favorable evidence.

In Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), the United States Supreme Court issued its decision as a landmark case at least as to the legal test used to determined whether a defendant's counsel was constitutionally effective under the Sixth amendment. A successful claim of ineffective assistance of counsel, according to the United States Supreme Court in Strickland requires that a habeas petitioner prove two elements: (1) Deficiency: The defendant must show that counsel's performance was deficient, to the extent that counsel was not functioning as the "counsel" guaranteed by the Sixth amendment, and (2) Prejudice: where the defendant must show that his counsel deficient performance prejudiced his defense, to the extent that the defendant was deprived of a fair trial. "a trial whose result is reliable."

The United States Supreme Court held in Miller-El v. Cockrell, 123 S. Ct. 1029 (2003), that the Slack v. Mc Daniel standard requires that a certificate of appealability (COA) be issued "only if the application/applicant has made a substantial showing of the denial of a constitutional right. § 2253(c)(2). When a district court denies a habeas petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a COA should issue when he shows, at least, that jurists of reason would find it debatable whether the petition state a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. A COA will issue only if § 2253's requirements have been satisfied. When a habeas applicant seeks a COA, the court of appeals should limit its examination to a thershold inquiry into the underlying merit of his claims. This inquiry does not require full consideration of the factual or legal bases supporting the claims. Consistent with this courts precedent and the statutory text, the prisoner need only "a substantial showing of the denial of a constitutional right". § 2253(c)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the district courts resolution of his case or that the issues presented were adequate to deserve encouragement to proceed further. E.g. Id. at 484, 120 S. Ct. 1595.

Applicable Law.

Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall and State deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within it's jurisdiction the equal protection of the law.

Federal Rules of Civil Procedure 28 U.S.C. § 2253 (C)(2)

A certificate of appealability should issue only if a petitioner has made a substantial showing of the denial of a constitutional right.

Federal Rules of Civil Procedure 28 U.S.C § 2254 (e)(1)

The applicant shall have the burden of rebutting the persumption of correctness by clear and convincing evidence.

Texas Rule of Court 18(B)

A judge must disqualify in any proceeding in which: (A-2) the judge knows that individually or as a fiduciary, the judge has an interest in the subject matter in controversy; (B) Grounds for Recusal; (1) the judge impartiality might reasonably be question; (2) the judge has a personal bias or perjudice concerning the subject matter or a party.

Code of Judicial Conduct - Canon - 3B

(1) a judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate; (5) a judge shall perform judicial duties without bias or prejudice. To justify disqualification or recusal, the judge's bias must be personal or based on some extrajudicial reason.

Factual Application and Discussion

A careful examination of the facts in this case will show the United State Court of Appeals for the Fifth Circuit erred in its decision to deny Petitioner a certificate of appealibility (COA) base on a procedural time-bar without reaching the underlying constitutional denial claims presented, that resulted in a gross and grave miscarriage of justice in a case regarding newly discovered factual actual innocence evidence. The fifth circuit court of appeals was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been proved, as § 2253 (c)(2) requires. More fundametally, the court did not give full consideration to the substantial newly discovered factual actual innocence evidence put forth in support of the claims that were raised. In Mc Quiggin v. Perkins, 569 U.S. 383, 386 (2013), a case which is the same posture as this case, the Supreme Court held that "actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar or the expiration of the of the statue of limitations". Petitioner presented a substantial showing of newly discovered factual actual innocence evidence to the fifth ~~court~~ circuit court of appeals attacking the reliability of Plano Police Department's (PPD) detective Brian Pfahning's investigation into Petitioner becoming a person of interest then suspect to this offence.

On July 22, 2010, Petitioner and his girlfriend came to Motel 6 room 243 around 8:00 p.m. in the evening to visit a man they knew by the name Byron Yarbrough, (RR 4-27-8). Petitioner was not the registered owner of room 243 on July 22 or 23, 2010, (Exhibit A). Yarbrough gave Petitioner and his girlfriend permission to borrow his room and a key before he went to room 322 at the Quality Inn to where he stated he recognized the strength of the only black male up close and personal wearing jail attire, (RR4·191,195).

The state cannot compel an accused to stand trial before a jury/judge while dressed in identifyable prison clothing, as doing so impinges upon the defendant's persumption of innocence violating the Due Process Clause. See Estelle v. Williams, 425 U.S 501, 96 S. Ct. 1691 (1976); Ex parte Clark, 545 S.W. 2d 175 (Tex. Crim. App. 1977). Of course, the clothing must be identifyable as prison or jail clothing for a claim to rise. See Goodspeed v. Estelle, 436 F. Supp. 1383 (N.D. Tex. 1977). Counsel addressed the court about Petitioner being walked in and out of court in jail attire infront of witnesse's waiting to testify against him which clearly satisfies a denial of the fifth and fourteenth amendments to the U.S. Constitution.

Petitioner's mother brought a change of clothes for his trial, but counsel and the court failed to allow Petitioner to change out for his trial. Petitioner was not a threat to the judge, people at trial, prosecutor or himself and never had a escape on his record. Petitioner was already deemed "guilty of something" before state witnesse's testified. Prior to witnesses for the state were sworn in the prosecutor read Petitioner's enhancement paragraph infront of witnesse's. The judge intervened and warned the prosecutor that this violation should be declared a mistrial, (RR4·8-9).

By witnesse's hearing Petitioner's enhancement paragraph a negative seed was planted in the minds of state witnesse's to where they stereotyped and prejudged Petitioner prior to their testimony. Counsel failed to move for a mistrial when the prosecutorial misconduct occurred which satisfies a clear denial of the fifth, sixth and fourteenth amendments. Counsel also made his own incriminating remarks by mentioning infront of state witnesses waiting to testify that "Petitioner had prior convictions and are also charged with some other robbery offences". Counsel then stated "these witnesses may have information that would link him to that, I know there's got to be some tie-in", and that "Petitioner stayed in the room that night and the previous night", (RR4·12-14). Counsel then presented Petitioner's motion to suppress to suppress PPD's unlawful search, seizure and search warrants, (Exhibit·B).

Counsel allowed the court to carry the suppression motion along with the trial instead of urging the court to rule prior to trial so that illegally obtained evidence would not infect Petitioner's trial, (RR4·14, 41). The prosecutor's remarks infected Petitioner's trial with unfairness and uncertainty. See U.S. v. Mc Coner, 530 F.3d 484, 500-01 (6th Cir. 2008), noting that a prosecutor's reference to a defendant's prior drug conviction was improper because it violated court order prohibiting reference to defendants prior conviction. In Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), the United States Supreme Court issued its decision as a landmark case at least as to the legal test used to determine whether a defendant's counsel was constitutionally effective under the sixth amendment. The Supreme Court in Strickland requires that a habeas Petitioner prove two elements: (1) Deficiency: The defendant must show that counsel's performance was deficient, to the extent that counsel was not functioning as the "counsel" guaranteed by the sixth amendment, and (2) Prejudice: where the defendant must show that his counsel deficient performance prejudiced his defence, to the extent that the defendant was deprived of a fair trial "a trial whose result is reliable".

Counsel's actions at the start of this trial clearly satisfies the deficiency and prejudice standard requirement found in Strickland, a case which is the same posture as this case.

There was bank surveillance footage of newly discovered factual actual innocence evidence from July 20 and 21, 2010 in support of Petitioner's claim that was hidden from Petitioner's viewing throughout this case and trial. This video evidence is critical, vital and this Court's review of this key piece of factual innocence evidence is urgently needed. Surveillance footage from the 20th show a black male who does not reveal any distinguishing marks or characteristics of Petitioner come in around 2:51 p.m.. This black male spoke to one of the bank employee's about a janitorial job for less than five minutes then left, (RR4·98-9). This black male never approached the teller's desk and was not acting or looking around erratically while interacting with this employee, (Exhibit·C).

The actions of this black male does not reveal that a casing took place or the conversation was unpleasant, (RR4·99-100). Video from the 21st depicts a masked offender fully concealed under dark clothing standing in a doorway. This individual never entered the lobby or approached the tellers desk at anytime. The video does not reveal any distinguishing marks, characteristics, gender, weight, height or the race of this individual standing in the doorway. This vague silhouette of a fully concealed body could match "hundreds or thousands" of other people in the area.

There was not a close-up visual of this black male displayed in the footage on July 20, 2010 to where his identity is revealed and according to a bank employee who spoke directly to the male, Petitioner was not the black male that came in or that he spoke to that day, (RR4·100-1, 149-50). The judge even admitted that the footage is not such that the face of the individual is clear, (RR6·8). The State in this case presented a blank disk that had state's exhibit-4 written on it. The prosecutor failed to display the footage on this blank disk for Petitioner or the court to view throughout the entire trial. Counsel objected to not being provided with a copy of the blank disk and told the judge, "I haven't seen States ex. 4, I don't know what's on there, just what they say".

Counsel repeats this again to the judge about not being provided with states-4, and the judge still denied and overruled the objection, (RR4.189, 182). The United States Supreme Courts leading case on the issue of the State withholding exculpatory evidence is Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). The Brady court held that, irrespective of the good or bad faith of the State, the prosecution must not withhold favorable evidence which is material to guilt or punishment. Evidence is "material" within the meaning of Brady when there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. See Smith v. Cain, 132 S. Ct. 627 (2012). A "reasonable probability" does not mean that the defendant would more likely than not have recieved a different result or verdict with the evidence, only that the liklihood of a different result is great enough to disclose exculpatory Brady evidence applies even when the defence has made no request for it's disclosure. See Strickler v. Greene, 527 U.S. 263, 119 S. Ct. 1936 (1999).

The blank disk that was withheld from viewing by the prosecutor was a clear denial of the fifth and fourteenth amendment and clearly satisfies the standard requirement of "material" found in Brady, a case which is the same posture as this case. This blank disk is critical and vital "material" because there is a reasonable probability that had the evidence been disclosed and shown in court it would have revealed Petitioner was no where near the bank on July 20 and 21, 2010, and that would have made the result of the proceeding different because it revealed Petitioner was in fact actually innocent of this offence.

There is newly discovered D.N.A evidence of factual actual innocence regarding the ski mask that were found in a suit incident occurred. Vazquez testified that she only saw one person person running off holding a bag, (RR4·70). Vazquez said since the person had on a hoody she couldn't identify what the person look like, (RR4·74). Vazquez's statement to police state nothing in it that pertains to Petitioner, (Exhibit with fifth circuit appeals).

Shawn Harasimo was present on July 20 and 21, 2010. Harasimo had direct contact and spoke with both men on July 20, 2010, (RR4·92). Harasimo said he spoke to a black male about a janitorial job for less than five minutes then he left, (RR4·98-9). Harasimo stated he was not shown a photo line-up by police of the first man that came in on July 20, 2010 around 2:51 p.m., and never picked anybody out or identified anybody as being the first black male that came in, (RR4·100-1). Harasimo said he only seen one man enter and rob the bank on July 21, 2010, (RR4·96).

Harasimo never identified Petitioner as being anywhere near the bank on July 20 or 21, 2010 and never identified Petitioner as the first black male he spoke with or saw on either day. Harasimo's statement to police states nothing in it about Petitioner's physical appearance or that pertains to Petitioner. Harasimo's out of court statement to police, testimony and bank surveillance from July 20 and 21, 2010 all failed to give an affirmative and accurate eyewitness identification of Petitioner as being the first black male near the bank on either day, (Exhibit - D).

Cade Woolbright was another bank employee who was present on July 20, 2010, (RR4·132, 138). Woolbright said the first man came in about 11:00 a.m. for a short amount of time that no meaningful information could be given and that he had on glasses, (RR4·142-4, 146). Woolbright said the first man that came in on the 20th was about 6'2", a light skinned man and that he felt very accurate in his description to police, (RR4·149-50). Woolbright never picked Petitioner out of a photo line-up or identified Petitioner as being anywhere near the bank on July 20, 2010 in his statement to police or testimony in court, (Exhibit, 5th Cir). Woolbrights statement to police, testimony and bank surveillance from July 20th all fail to give an affirmative and accurate eyewitness identification of Petitioner as being the first black male near the bank that day, (Exhibit - E).

Gary Daveport was a field engineer for the Marriott hotel on July 21, 2010. Daveport said the men whore hoodies and he could not identify them, (RR4·109).

Ginger Herrick was present on July 20 and 21, 2010. Herrick wrote a statement to police about the events on both days which she never mentioned anything about Petitioner's physical appearance, him being at the bank either day or his first name, (Exhibit - F). In the middle of Herrick's testimony she left with the prosecutor for a 15 minute recess. When she returns with the prosecutor she was ask by the prosecutor if she saw either of the two men that entered the bank on July 20, 2010 in the room and she said "yes the guy in the green jump suit, (RR4·184). The judge was disturbed to where he stated he recognized the strength of the only black male up close and personal in jail attire, (RR4·191, 195).

Herrick said she never spoke directly to the first man and never had direct interaction with him, (RR4·202-03). Herrick then mysteriously mentions Petitioner's first name which she never mentioned in her statement to police. Herrick said the first time she could identify "Brandon" was a few minutes ago. After mentioning Petitioner's name, Herrick then confessed to talking to the police, prosecutor, other bank employees and whoever else was outside waiting to testify violating her oath taken prior to trial, (RR4·204-06). Herrick was the only bank employee who left with the prosecutor in the middle of her testimony then returned 15 minutes later and addressed Petitioner by his first name as the first black male that came in on July 20, 2010.

Herrick's testimony constitutes "material" that should have been delivered to the defence under Brady v. Maryland which is the second withholdment of evidence by the State. Not only did Herrick fail to identify Petitioner in a photo line-up as the first black male to come in on July 20th, but the State knew that Herrick didn't identify Petitioner prior to trial and the State intentionally and knowingly used perjured testimony to help advance their case. The orgin of a prosecutor's duty is to disclose information to a defendant for examination. In Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L.Ed 791 (1935) the Court first established the general proposition that a prosecutor's knowing and intentional use of perjured testimony in obtaining a conviction violates the defendants due process rights and denies him a fair trial. The Mooney principle was expanded in Alcorta v. Texas, 355 U.S. 28, 78 S. Ct. 103, 2 L.Ed 9 (1957), to forbid the prosecutor's passive use of perjurious testimony.

The Court held that the prosecutor's knowing failure to correct inculpatory perjured testimony also violated due process. In Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L.Ed. 2d 1217 (1959), the Court expanded the Mooney principle even further and held that the prosecutor's knowing failure to correct perjured testimony, even if it relates solely to the credibility of the witness constitutes a violation of due process. Also see Ex parte Robbins, No. AP-76, 464 (Tex. Crim. App. June 29, 2009) where the court held that the due process clause of the fourteenth amendment can be violated when the state uses false testimony to obtain a conviction, regardless of whether it does so knowingly or unknowingly. To constitute a due process violation, the testimony used by the state must have been material to the defendant's conviction, meaning there has to be a reasonable liklihood that the false testimony could have affected the judgement of the jury or court.

Herrick's testimony did not only involve discrepancies, but instead actual perjury. Her perjured testimony was impeachable evidence that had made the differente between a conviction or acquittal just as in Bagley. See Bagley v. United States, 173

U. S. 667, 676 (1985). Herrick's perjured testimony was material evidence that is newly discovered due to it not being disclosed to the defence prior to trial satisfying the standard requirement found in Brady for the second time in this case, and that was a clear denial of the fifth and fourteenth amendment right.

Detective Brian Pfahning was the detective who investigated this case. Pfahning said he got an arrest warrant for Yarbrough after he looked at the bank footage because he recognized Yarbrough, but never issued a arrest warrant for Petitioner after watching the video, (RR5·167-8). Pfahning said he did a double-blind sequential six picture photo line-up of one picture at a time of Yarbrough and not Petitioner during his interview with bank employees. Pfahning said he never prepared a photo line up of any kind with a picture of Petitioner in it and never showed a photo line-up of Petitioner to any employee. Pfahning then revealed that Herrick specifically never picked Petitioner out from any kind of line-up throughout his investigation, (RR5·193·94).

Pfahning said police did a hotel check and found that Yarbrough was registered to the Motel 6 room #243, (RR5·168). Pfahning said thats how police were led to the motel room and mentioned when he got to room #243 Petitioner was not there, then said he never seen, heard or had contact with Petitioner prior to his arrest, (RR5·171). Pfahning stated after police had contact with Petitioner and searched the room police asked Petitioner if he could contact Yarbrough to verify that he gave Petitioner permission to be in his motel room. Pfahning said police ran a warrant check on Petitioner which came back clear, police then arrested Petitioner for the drug paraphernalia found in the room not robbery, (RR5·177-78).

Pfahning was the affiant who put the search warrants together in this case. The search warrants were made after police conducted the unlawful search and seizure and were signed by the same judge hearing the case. Pfahning said when he arrived a white female was in the room not Petitioner, (RR5·171). He said police for a identification line-up hearing, move for a recusal of a disqualified judge or a change of venue, and move for a suppression hearing prior to trial to suppress the unlawful search warrants. Counsel failed to advance any defence theory, even that of holding the State to its burden of proof. Counsel appeared throughout trial and on appeal to be helping the State advance their case to secure and affirm Petitioner's conviction.

During closing arguments; counsel made another false, incriminating and disingenuous comment to the court about Petitioner, "being found with money taken from the bank the day after", (RR5·199). Counsel intentionally failed to make an effective closing argument. Prior to the punishment phase hearing Petitioner and counsel got into a heated and disrespectful profanity laced shouting argument that could be heard from the courtroom, where Petitioner addressed counsel about a premeditated aiding and abetting between him, the state and the judge due to his ineffectiveness throughout the trial. This made counsel voice his disloyalty for Petitioner by stating "its not my problem, you were caught red handed". When Petitioner addressed defence counsel in court about the premeditation, counsel immediatly tried to withdraw as Petitioner's counsel with the presiding judge intervening and denying the conspiracy while zealously defending counsel's representation, (RR6·6-12).

Petitioner was court-appointed ~~the~~ this defence counsel for his trial who later became the same court-appointed defence counsel that handled Petitioner's appeal. Counsel failed to raise critical and vital issues of innocence at trial or on appeal. Counsel failed to raise his own errors or any objection he argued at trial and filed a non-meritorious appeal instead of challenging issues stated above. Petitioner insist that had defence counsel physically examined the D.N.A report, surveillance footage, search warrants and Motel 6 guest bill affidavits that was related evidence or engaged competent experts to do so, facts contradictory to those presented at trial would have been discovered just as in Soffar v. Dretke, 368 F.3d 441, 469 (5th Cir. 2004), a case which is the same posture as this case.

Defence counsel was incompetent, unreasonable and his performance was rendered deficient and prejudice, and was a clear denial of Petitioner's sixth amendment right that any rational juror, judge or justice would debate and call into questson. Defence counsel's actions in this case are similarly situated and clearly satisfies the standard required test in Stickland because of his lack of effectiveness representing Petitioner that fell way below an objective standard of reasonableness.

The trial judge over this case was disqualified, bias and should have recused himself immediantly upon being appointed to this trial. The judge was part of disputed evidence in this case that the defence objected to throughout the entire trial. This judge was the same judge that issued unlawful search warrants stemming from a unlawful search and seizure, (RR7-Defendants ex. 2). The judge carried the defence's motion to suppress along the entire trial for a day and a half before ruling on motion. The judge denied multiple defence objections to try to suppress the unlawful search warrants he signed which the judge denied and overruling all 11 attempts, (RR5·118, 124, 141, 146, 148, 152, 158, 159, 162, 164, 195).

The judge signed these unlawful warrants that had the search itself on the 23rd, (RR5-174, 178). The judge agrees with the defence having standing to raise the suppression motion; and from what he can tell nothing was found on Petitioner from said pat down. He later confessed that he dosen't know if there's a warrant, (RR5-123-4). The judge tampered with and destroyed critical evidence of Petitioner's innocence in court infront of a state witness testifying. During a witnesse's testimony, the judge took a pair of scissors and cut of the digital snapshot information headings which contained the time, date, pixel and other vital information then renumbered the cut off hearsay portion then the photos, (RR4·97, 114). Even counsel stated, "there's no need to try to exclude the snapshot headings", (RR4·93), (Exhibits - C and D).

During the trial, the judge called defence counsel and the prosecutor up to his bench and secretly discuss something between the three in a huddle type whisper off the record, (RR5·117-18). When Petitioner asked what was discuss; Petitioner was never notified of the secretly whispered discussion between the three. After the discussion it appeared that a conflict of interest was beginning to form; and as the trial went on it was clear that ~~all~~ three were aiding and abetting each other to secure a conviction. The judge then makes false and perjured comments about Petitioner, "sitting there with the money and with the dye pack exploding". Petitioner addressed the judge about where the bank video was that showed him inside the bank. The judge replied, "the video is not such that the face of the individual is clear... so what", (RR6·6-9,11), (Exhibit-C).

The judge imposed harsh treatment on Petitioner to hide that a individual already incarcerated for this offense had confessed, plead guilty and made a sweet 12 yr. plea deal to this offense inexchange for his testimony, (cause #401-82539-10, 2010-P-419, Plano 10-133376). This individual was in the same trial court with the same trial judge that accepted the lenient 12 yr. plea deal to this offence. The same trial judge convicted and sentenced Petitioner to 35 yrs., for the same criminal action. The judge imposed a sentence on Petitioner that was three times harsher than that of the individual that confessed and plead guilty to this offence. The judge voiced his own bias by wanting to imposed an even harsher sentence of 45 to 50 yrs. on Petitioner for this same offence, (RR6·133).

The record throughout the trial reveal the judge violated Canon-3 found in the Code of Judicial Conduct. According to Canon (3b), adjudicative responsibility, (1) a judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate; (5) a judge shall perform judical duties without bias or prejudice. To justify disqualification or recusal, the judge's bias must be personal or based on some extrajudicial reason. A judge committs willful misconduct if the misconduct that was committed was voluntarily and intentional. The judge over this case willfully, voluntarily, intentionally and persistently violated mandatory provisions found in the Texas Code of Judicial conduct. The judge engaged in willful and persisent conduct but harbor strong doubt as to Petitioner's guilt and affirming his conviction. The State of Texas has committed a gross and grave miscarriage of justice in convicting Petitioner and sentencing him for this crime.

There is a critical importante not only to Petitioner to have this Court grant certiorari review in this case, but also to others similarly situated. Petitioner stress the national importance he feels need to be addressed and brought to the public's attention. These are the critical and vital reasons why Petitioner ask this Honorable Court to grant certiorari review in this case. The conviction for which Petitioner is incarcerated for was obtained in violation of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights to the United States Constitution. Petitioner has been wrongfully convicted and sentenced to 35 years imprisonment for a crime he did not commit. The issues presented in this writ of certiorari are pure issues of fact firmly founded in the record.

Petitioner is proceeding in this writ of certiorari pro se, because he cannot locate any attorney who would be willing to represent him on a pro bono basis. Petitioner is left with no other option but to prepare his own writ of certiorari and litigate the petition himself. The facts and laws at issue, which Petitioner has presented in his petition, are so intertwined with complicated points of statutory and constitutional law that he is placed at a distinct unfair disadvantage, that it would be unreasonable to expect that an inexperienced pro se petitioner, is able to prepare a meaningful and viable petition as an experienced attorney. Petitioner prays that this honorable Court will take notice that he is a layperson who is not trained in the law.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brandon L. Cooper, pro se

Date: July 14, 2022

Appendices