

22-7600

No. \_\_\_\_\_

ORIGINAL

FILED

MAY 09 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RANDALL COOPER — PETITIONER

(Your Name)

vs.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

Randall Cooper #197405

(Your Name)

W. C. C. F.

P.O. Box 1889

(Address)

Woodville, MS. 39669

(City, State, Zip Code)

N/A

(Phone Number)

**QUESTIONS PRESENTED**

**WHETHER THE NEWLY DISCOVERED EVIDENCE PRESENTED BY THE PETITIONER  
SHOULD WARRANT A NEW TRIAL PURSUANT TO THE 5TH 6TH AND 14TH  
AMENDMENTS OF OUR UNITED STATES CONSTITUTION AND/OR AT MINIMUM  
WARRANTED A EVIDENTIARY HEARING UPON THE MATTERS**

## **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**

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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[ ] is unpublished.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[ ] is unpublished.

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,  
[ ] is unpublished.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[ ] is unpublished.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).

For cases from **state courts**:

The date on which the highest state court decided my case was 2/13/2023. 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Federal Rules of Criminal Procedure Rule 33 (b).

Federal Rules of Criminal Procedure Rule 52 (b).

Miss. Code Ann. 99-39-23 (6)

M.R.C.P. 59 (b).

M.R.C.P. 60 (b).

18 U.S.C.A.

5th Amendment U.S. Constitution.

6th Amendment U.S. Constitution.

14th Amendment U.S. Constitution.

## **STATEMENT OF THE CASE**

This appeal proceeds from the circuit court of Lowndes County, Mississippi, and the judgment of conviction for murder entered against him following a jury trial held on May 13-15, 2015, with the Honorable Judge Lee Howard, Circuit Judge presiding. At trial, the theory of self-defense was asserted by your Petitioner, wherein the initial finding of the jury was an adjudication of guilt. Material exculpatory evidence has since, recently, became available that should have been reasonably considered in light of the asserted defense, the evidence is supported by the evidence in this case, including but not limited to the trial record and opinion rendered by our Honorable Mississippi Supreme Court upon direct appeal.

The state Supreme court in it's opinion had relied on the testimony of the affiants that produced the sworn statements in it's opinion that affirmed your Petitioner's convictions and sentence(s) on direct appeal, so to fail to afford the Petitioner a new trial upon the merits, and/or at minimum an evidentiary hearing upon the issues was plain error. Federal Rules of Criminal Procedure 52(b). Ultimately, the state Supreme court afforded no redress upon the issues and denied any fair opportunity for the Petitioner to be heard upon the issues. Your Petitioner respectfully now brings this appeal.

## **REASONS FOR GRANTING THE PETITION**

### **I. THAT NEWLY DISCOVERED EVIDENCE HAS BECOME AVAILABLE THAT WHICH SHOULD ENTITLE THE PETITIONER TO A NEW TRIAL AND/OR IN ALTERNATE TO AN EVIDENTIARY HEARING UPON THE MATTERS**

Now, your Petitioner argues that he should be entitled to a new trial so as to allow the jury to determine, in light of his newly discovered evidence and previously asserted defense, whether he had in fact acted in necessary self-defense under the circumstances when the victim was killed. The trial court, including the appellate court has acknowledged through the testimony of the record that the victim at some point was in possession of a weapon on the night of the shooting corroborated through the testimony of the state's witnesses.(SEE EXHIBIT A).

Recently, the undersigned counsel was presented with a firearm, wherein it was alleged that the weapon in question was the proposed weapon possessed by the deceased(victim) on the night of the shooting. After further research and investigation of the matters, the undersigned was able to contact trial witnesses, Virgal Lovelace, and Tevin Harris wherein they were able to positively identify the weapon as the weapon that was possessed by the victim on the night of the shooting, and/or at the time of the shooting. (SEE ATTACHED SWORN AFFIDAVITS).

Where there are affidavit's to support a Petitioner's sworn claims in a post-conviction Motion, under normal circumstances, a Petitioner at minimum is entitled to an evidentiary hearing upon the issues. Lackaye V. State, 166 So 3d 560 (2015). This lies especially so where the asserted allegations are supported by the facts and record of case

and the substantial and material issues of law. Likewise, due process of law should require that the Petitioner be afforded a new trial, and/or at minimum, that the Petitioner is granted an evidentiary hearing upon the issues. 5th, 6th and 14th Amendments of Our United States Constitution.

M.R.C.P 60(B)(3) Provides that a court may grant relief from judgment based on “Newly Discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” The Mississippi Supreme Court in the case of Moore v. Jacobs, 752 So.2d 1013, 1017 (Miss. 1999), pointed out that “A motion for a new trial based on new evidence is an extraordinary motion, and the requirements of the rule must be strictly met.” The decision set out five criteria that must be met in order for the trial court to grant relief:

1. The evidence be discovered following the trial;
2. There be proof, or it may be inferred, that the movant exercised due diligence to discover the new evidence;
3. The evidence be not merely cumulative or impeachment;
4. The evidence be material;
5. The evidence is such that a new trial would probably produce a new result.

“A party asking for a new trial on the ground of newly discovered evidence must satisfy the [trial] court that the evidence has come to his knowledge since the trial, and that it was not owing to a want of diligence on his part that it was not discovered sooner.”

Sullivan v. Heal, 571 So.2d 278, 281 (Miss. 1990). “[F]acts implying reasonable diligence must be proved by the movant.” NLRB v. Decker & Sons, 569 F.2d 357, 363-4 (5th Cir 1978).

The above referenced authority implicates that the trial court ultimately is invested with

the jurisdiction to address the material issue of diligence however the Petitioner will elaborate. The Petitioner at trial had asserted his theory of self defense and had testified to the extent in this case that the victim had possessed a weapon and that the victim was in the process of drawing his weapon at the time that the fatal shots were fired. Id. According to the opinion rendered by our Mississippi Supreme Court, both affiants had testified to witnessing the victim possess a weapon at some period on the night of the shooting, however this evidence had not been discovered prior to the trial. Consequently, the jury was never afforded any opportunity to consider this exculpatory and material evidence to the defense of self defense that had been asserted. In light of the interest of receiving a fair trial and due process of law that which is afforded by the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments of Our United States Constitution the Petitioner should be entitled to a new trial wherein the recently discovered evidence may be considered by a jury in light of his defense and/or at minimum should be entitled to an evidentiary hearing upon the matters. The Petitioner has diligently utilized any and every source available to try to gather any information helpful to the discovering of this evidence however his ability to do so has been hampered due to the condition of his incarceration, however he has diligently sought. Upon presentation of his arguments and evidence that will be introduced at any evidentiary hearing he believes that the trial court will find that he should be entitled to a new trial.

“Newly discovered evidence,” warranting exception to statutory bar against successive postconviction relief motions, can refer to evidence, that is, an exhibit, testimony, or some other information that could have been offered as evidence in the defendant’s trial but was not offered because it was not reasonably discoverable at the time of the trial. Miss. Code Ann § 99-39-23(6).

In order for to meet the materiality requirement for new trial based on newly discovered evidence, newly discovered evidence must be more than merely impeaching. Fed.Rules

Cr.Proc.Rule 33(b), 18 U.S.C.A.; U.S. v. Meeks, 742 F.3d 838 (2014).

Here in this case, the evidence that has recently been made available and verified by the state's witnesses can not be considered to be merely cumulative or impeaching. In light of the defense that was asserted at trial the evidence should be considered to be exculpatory as to the Petitioner's defense that was timely and reasonably asserted. The trial court records reasonably reflects that the evidence testimony presented at the trial verified that the victim in this case had possessed a weapon on the night of the shooting around the time that the shootings occurred. More specifically, the affiants at trial had testified that, (1) that the victim had had a weapon at the party, (T.r. 115, 117, 124),; and, (2) that the victim had had a black and chrome pistol in the Monte Carlo just prior to the Shooting, but the jury was not allowed to review the material evidence of the Petitioner's defense to ensure that it was afforded a fair and complete consideration of the issues including the defense that was asserted by the defense.

It is undisputed that the evidence that has been acquired by the Petitioner was unavailable at the time of the trial, that he had asserted the affirmative defense of self-defense at trial and that the jury who determined his fate was deprived of the opportunity to consider this material and exculpatory evidence because it was not available. Under these circumstances, the Petitioner should be entitled to a new trial and/or at minimum opportunity to be heard at an evidentiary hearing upon the matters. 5th, 6th and 14<sup>th</sup> Amendments of Our United States Constitution.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Randall Cappel

Date: May 9, 2023