

22-7827 **ORIGINAL**
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

SCOTT ANDERSON-PETITIONER

vs.

SUPERINTENDENT SMITHFIELD SCI, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO
THIRD CIRCUIT COURT OF APPEALS
PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

Is a defendant legally and factually innocent, if the State fails to prove each and every element of the crime {facts}, and the facts do not establish elements necessary for conviction, and therefore, the State has not legally proven its case? And whether the Third Circuit Court of Appeals abused its discretion by not granting a Certificate of Appealability where reasonable jurist would have found this claim debatable amongst jurist?

Suggested Answer: yes

LIST OF PARTIES

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT OF CERTIORARI PETITION..	12
CONCLUSION.....	17

INDEX TO APPENDICES

APPENDIX A	Third Circuit Court of Appeals Opinion
APPENDIX B	District Court Opinion

TABLE OF AUTHORITIES CITED

STATE CASES

<u>Commonwealth v. Kelly</u> , 4 A.2d 805 (1934).....	13
<u>Commonwealth v. Kichline</u> , 361 A.2d 282 (1976).....	13
<u>Commonwealth v. Kelly</u> , 4 A.2d 805 (1934).....	13

FEDERAL CASES

<u>Barefoot v. Estelle</u> , 463 U.S. 880 (1983).....	15
<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	12, 13
<u>Marbury v. Madison</u> , 5 U.S. (1 Cranch) 307 (1979).....	14
<u>Miller-El v. Cockrell</u> , 537 U.S. 322 (2003).....	15
<u>Schlup v. Delo</u> , 513 U.S. 298 (1995).....	12

STATUTES AND RULES

28 U.S.C. §2253.....	15
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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

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was on February 1, 2023. However, Petitioner requested and was granted an extension of time.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT XIV.....no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The evidence adduced at trial by the State tended to show the following:

Several days prior to Friday August 19, 1994, Petitioner had asked a friend, Gary Miller, if he could borrow his jeep ("Suzuki Sidekick") on that date to pick up a mattress. Mr. Miller had loaned his car to Petitioner previously and agreed to allow him to use it again. Trial Record (TR) Vol. I 127-128. Accordingly, at approximately 9:00-9:30 a.m. on August 19, 1994, Petitioner telephoned Mr. Miller residence and spoke with his wife about picking up the jeep. Within one-half hour of his phone call, Petitioner appeared at the Miller residence and was given the key to the Suzuki. When he left the Miller home and got the Suzuki, he was alone. Tr. Vol. I, 134-37.

Later that morning, Petitioner was observed in Camp Hill driving the Suzuki and asking for directions to Fourth Street in New Cumberland. Tr. Vol. I, 139-144; Vol. II, 5-7. Another black male was seen with him at that time, occupying the car's passenger seat. Tr. Vol. II, 5-7.

Still, on the morning of August 19, 1994, a black male later identified as Seifullah Abdul-Salaam (hereinafter "Abdul-Salaam") emerged from Maple Alley in New Cumberland, Pennsylvania and knocked on the door of D & S Coin Shop located on Fourth Street, Tr. Vol. II, 122-124. In response, the shop owner, Dale Rishel, told Abdul-Salaam to "come in," and Abdul came in the shop. Tr. Vol. I, 73-75. Several minutes later, Petitioner similarly walked from Maple Alley to the coin shop and went inside.¹ Tr. Vol. II, 122-24.

¹ As he walked to the coin shop, Petitioner was seen carrying a pair of gloves and a black bag. Tr. Vol. II, 123-25.

Upon entry into the shop and prior to Petitioner's arrival there, Abdul-Salaam began asking the store owner, Dale Rishel, questions about the Canadian Maple Leaf Coins. Tr. Vol. I. 73-74. Suddenly, Abdul-Salaam pulled up his shirt, grabbed a silver colored handgun and came across the counter top of Mr. Rishel. Tr. Vo. I, 74-76. Mr. Rishel then reached for, but apparently dropped, his own weapon, a .38 caliber handgun. Id.

As Abdul-Salaam came across the counter, Mr. Rishel became aware of the presence of a second man in his store. Tr. Vol. I, 106. Although Mr. Rishel was unable to identify the second man, other evidence which was not disputed established that Petitioner was the second man. Tr. Vol. I, 80-81.

The second man also came over the counter, and, as Mr. Rishel lunged at the two men, one of them was pushed into and broke the front window of the coin shop. Tr. Vol. at 78. Abdul-Salaam put his handgun to Mr. Rishel's head and pulled Mr. Rischel around the counter to the floor. The second man (Petitioner²) remained behind the counter. Tr. Vol., at 81-82. Abdul-Salaam bound Mr. Rishel with tape and an electrical cord, kicked him and asked him where the money was, threatening to "blow his head off" if he did not satisfactorily reply. Tr. Vol. I, 83-86.

Mr. Rishel testified that when Abdul-Salaam first entered his shop, he saw no evidence of any weapon, not even a bulge underneath Abdul-Salaam's shirt. Tr. Vol. I, 103. He further testified that the second man-Petitioner never made any threats

² At least one prosecution witness described Petitioner as then looking "frightened and shocked." Tr. Vol. II,109.

to him and may not even had any physical contact with him during the entire incident. Tr. Vol. I, 108, 119.

At some point, while Abdul-Salaam was still trying to ascertain from Mr. Rishel the location of the "rest of the money," Petitioner said "we've got to get out of here." Tr. Vol. I, at 87. Abdul-Salaam exited the store first, leaving through the front entrance and then dashing behind a parked van and disappearing up Bridge Street. Tr. Vol. I, 87-88; Vol. II, 35-36, 86-88, 128-129.

Shortly thereafter, Petitioner similarly exited the coin shop. Virtually simultaneously with Petitioner's exiting the coin shop, he was confronted by Officer Willis Cole of the New Cumberland Borough Police Department, who, along with Corporal Larry Zeigler, had been dispatched to the scene in response to a 911 call. Officer Cole yelled at Petitioner to stop. Tr. Vol. II, 42, 136. With gun drawn and pointing with his right hand, Officer Cole further ordered Petitioner to get down on the ground on the sidewalk in front of coin shop and keep his hands up. Tr. Vol. II, 45-46, 130.

Petitioner made no attempt to flee from Officer Cole and offered no resistance; rather, he complied with Officer Cole's directives. Tr. Vol. II, 67, 90-94, 136; Vol. III, 33-34. At some point after heeding Officer Cole's command to stop and prior to lying down, Petitioner removed a handgun from his pocket with his left hand and pitched the gun to the ground, away from him. Tr. Vol. II, 42-44; 63-64; 136-137.³

³ The gun was the .38 caliber pistol that belonged to the owner of the coin shop, Dale Rishel. It had not been fired. Tr. Vol. I, 90; Vol. III, 119.

Once on the ground, Petitioner remained there compliantly, with his hands placed behind his back, waiting for Officer Cole to handcuff him. Tr. Vol. II, 138, 143. As Petitioner lay on the sidewalk, Officer Cole stood over him, straddling his legs. Tr. Vol. II, 48, 67, 95, 143. ⁴At that point, Corporal Zeigler drove by in an unmarked cruiser. His eyes contact with Officer Cole indicated that the latter had Petitioner "under control," and accordingly, Corporal Zeigler drove off in pursuit of the other suspect. Tr. Vol. III, 33-34.

Shortly thereafter, Abdul-Salaam came running down the street back toward the coin shop, with a gun in his right hand. Tr. Vol. I, 49-50. While Officer Cole was crouched over the Petitioner, reaching for his handcuffs and still straddling Petitioner's legs. Abdul-Salaam suddenly began firing his weapon and shot Officer Cole. Tr. Vol. I, 49-50; Vol. II, 69-71, 97-100, 143-145.

Forensic evidence presented by the Commonwealth disclosed that Officer Cole died of a gunshot wound to the chest and the trajectory of the fatal wound was "downward." The forensic pathologist testified that the downward trajectory of the wound could be explained by Officer Cole's having leaned significantly forward or having crouched at the time he was shot. Tr. Vol. III, 19.

The Commonwealth's evidence further showed that following the shooting, Petitioner and Abdul-Salaam ran back to the parked Suzuki that Petitioner had driven to New Cumberland earlier that morning.⁵ Petitioner then drove quickly out

⁴ As prosecution witness, Quan Vihn acknowledged: "The man [Petitioner] was just laying {sic} on the ground doing whatever the police officer wanted him to do." Tr. Vol. II, 143-144.

⁵ The evidence was somewhat contradictory with respect to the manner in which Petitioner and Abdul made it back to the car. James Howie and Dave Michaels testified that the shooter-Abdul-Salaam was ahead of Petitioner as they

of New Cumberland returned to Harrisburg, pursued by an off-duty police officer in an unmarked car. Tr. Vol. II, 191-96.

Shortly after entering Harrisburg, Pennsylvania, the Suzuki was driven over curbing and brought to a stop, whereupon first Petitioner was approached by a responding Camp Hill Borough Police Officer who requested that Petitioner "stand by for a minute." Petitioner made no attempt to flee, but rather was fully cooperative. He remained at the scene until arrival of Harrisburg Police Officers who then took him into custody. Tr. Vol. III, 86-87. Thereafter, Petitioner led the police to the area where he believed Abdul-Salaam might be found and actually pointed Abdul out to the police, resulting in his arrest. Tr. Vol. III, 76-78.

Petitioner testified in his own behalf as follows:

Earlier in the week, he had made arrangements to borrow Gary Miller's car to pick up a mattress for his girlfriend. After obtaining the car on the morning of August 19, 1994, Petitioner called an acquaintance named "Seif" (Abdul-Salaam) for purpose of buying \$30.00 worth of drugs. Tr. Vol. IV., 5-9. Petitioner then picked up Abdul-Salaam, who offered Petitioner twice the drugs for no money if Petitioner would give him a ride across the river. Tr. Vol. IV, 10.

Specifically, Abdul-Sallam wanted to go to Fourth Street in New Cumberland. Tr. Vol. IV, 11. Petitioner agreed to Abdul-Salaam's proposal and, after stopping to

ran from the scene of the shooting. Tr. Vol. I, 51, 102-103. Steve Vaughn testified that Petitioner was the first man he saw running up the street and that the second man was thirty to seventy feet behind Petitioner. Tr. Vol. II, 173-176. Kerry Wildermuth testified that she only saw one man running into the parking lot where the car was located and that the driver, whom she identified as Petitioner, was already at the car when the second man arrived there. Tr. Vol. II, 180-83.

ask for directions, drove to New Cumberland, with Abdul-Salaam as his passenger. After he directed Petitioner to park the car, Abdul-Salaam, for the first time, expressed his "intent to take coins from a coin dealer." Tr. Vol. IV, at 15. Although Petitioner initially wanted no part of it, he acquiesced in Abdul-Salaam's request for assistance being told that Abdul-Salaam was "only going to push the man down, get some coins and leave." Tr. Vol. IV, at 15. Petitioner's role was to merely collect coins and put them in a bag that Abdul-Salaam had brought with him, concealed under his jacket. Tr. Vol. IV, at 56.

Because of his hesitancy, Petitioner left the car sometime after Abdul-Salaam had excused therefrom en route to the coin shop. Tr. Vol. IV, 16. Per Abdul-Salaam's instructions, Petitioner carried the bag⁶ with him to the coin shop. Upon entering the shop, Petitioner "froze" at the sight of Abdul-Salaam pointing a gun at the shop owner's head. Tr. Vol. IV, at 22. Abdul-Salaam also pointed the gun at Petitioner as he (Abdul-Salaam) demanded the production of gold chains. Tr. Vol. IV, at 24. Fearing that Abdul-Salaam would otherwise kill him and/or the shop owner, Petitioner attempted to follow Abdul-Salaam's order. Tr. Vol. IV. at 22. Also, that fear prompted Petitioner to pick up the shop owner's gun from the floor "for self-protection." Tr. Vol. IV, at 24.

Although Abdul-Salaam threw the carrying bag to Petitioner and told him to "get the gold coins," Petitioner could find only silver coins, which he put inside the

⁶ According to the Petitioner, the only item in the bag was a pair of gloves, which he removed from the bag and carried. Tr. Vol. IV, at 17.

bag. Petitioner then threw the bag in front of Abdul-Salaam and looked up, at which time he saw a police car parked outside. Tr. Vol. IV, at 25.

Abdul-Salaam ran out of the shop, and Petitioner exited therefrom moments later. Upon doing so, Petitioner was confronted by Officer Cole, who with gun drawn, told Petitioner to "freeze." Tr. Vol. IV, at 26-27. Petitioner responded by putting his hands in the air and advising Officer Cole that he had a gun. Petitioner then dropped the gun onto the ground and complied with the Officer's directives to lie on the ground.. Tr. Vo. IV, at 27. Office Cole straddled over Petitioner, grabbing his arms behind his neck. Tr. Vol. IV, 28-29.

After hearing some yell "here he comes," Petitioner heard shots being fired. When the gunfire started, Petitioner put his head down. When the gunfire stopped, Petitioner put his head up and saw Officer Cole had been shot. Out of fear for his life, Petitioner "panicked" and ran. Tr. Vol. IV, at 88. However, after the Petitioner got back to the parked Suzuki and tried to start it, he was suddenly confronted by Abdul-Salaam. Motioning "like he still had a gun," Abdul-Salaam then jumped into the car. Tr. Vol. IV, at 34. Still fearful of Abdul-Salaam, Petitioner "did what he said." Tr. Vol. IV, at 35.

After arriving back in Harrisburg, Petitioner and Abdul-Salaam took off in opposite directions. Tr. Vol. IV, at 37. Shortly thereafter, Petitioner was stopped by the police, and he submitted to arrest without any resistance. Petitioner then assisted the police in apprehending Abdul-Salaam, pointing him out "as the one who killed

the officer" and warning the police that Abdul-Salaam "may have a gun." Tr. Vol. IV, 39-42.

Throughout his testimony, Petitioner repeatedly steadfastly denied that he had any knowledge prior to the robbery that Abdul-Salaam had a gun. Tr. Vol. IV, at 20, 22, 56-57, 67-68, 91.⁷ Moreover, Petitioner testified without contradiction that he never owned a gun in his life. Tr. Vol. IV, at 25.⁸

⁷ During his opening statement, trial counsel made the following remarks, referring to this client, Petitioner: "Obviously, the man's not innocent. If nothing else he guilty of profound stupidity for running around with a guy who's got a gun..." Tr. Vo. I, at 34.

⁸ Similaarly, in his statement to the police, which was admitted into evidence, Petitioner denied having any knowledge that Abdul-Salaam had a weapon until after he (Petitioner) entered the coin shop. Tr. Vol. IV, at 113-114.

REASONS FOR GRANTING THE WRIT OF CERTIORARI PETITION

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Is a defendant legally and factually innocent, if the State fails to prove each and every element of the crime {facts}, and the facts do not establish the elements necessary for conviction, and therefore, the State has not legally proven its case? And whether the Third Circuit Court of Appeals abused its discretion by not granting a Certificate of Appealability where reasonable jurist would have found this claim debatable amongst jurist?

.....

Petitioner contends that this Court should hear the instant petition for certiorari to establish principle law that timeliness should not be a threshold inquiry when the Petitioner has established that he is legally or factually innocent.

This Court has explained in prior ruling that legal innocence is different than factual innocence. For example, in Schlup v. Delo, 513 U.S. 298 (1995) decision explains, the gateway actual innocence standard is "by no means equivalent to the standard of Jackson v. Virginia, 443 U.S. 307 (1979), "which governs claims of insufficient evidence. *Id.*, at 330, 115 S.Ct. 851, 130 L.Ed. 2d 808. When confronted with a challenge based on trial evidence, courts presume the jury resolved evidentiary disputes reasonably so long as sufficient evidence supports the verdict. Because a Schlup claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record.

In essence, by ignoring facts that do not establish that a crime was committed, and leaving it up to juries who are prone to make mistakes to be the final arbitrators, is wrong in light of decisions such as Jackson v. Virginia, which governs insufficiency of the evidence claims.

To place this enormous burden on layman juries and to eliminate any future review because the jury has spoken is in essence unconstitutional.

Petitioner contends that there is no difference between legal and factual innocence other than word semantics. For example, if the facts were no proven to find a defendant guilty, then that's factual innocence; the facts don't prove the crime. In addition, it's also legal innocence because the elements have not been proven beyond a reasonable doubt to establish guilt. There's a difference without a distinction.

Instantly, Petitioner was convicted of second degree murder where the Commonwealth of Pennsylvania never proved that Petitioner committed the acts to be convicted of second degree murder.

Under Pennsylvania Law, the felony murder doctrine requires the killing be accomplished in the furtherance of the intentional felony. Commonwealth v. Rawls, 477 A.2d 540, 543 (1984). It is well established that a defendant may be found guilty of felony murder if there is not a break in the chain of events between the killing and the felony such that homicide had an ultimate relation and close connection with the felony. Commonwealth v. Kichline, 361 A.2d 282, 286 (1976); Commonwealth v. Kelly, 4 A.2d 805, 807 (1934). It is the relationship between the felony and the homicide that

must be analyzed to determine whether the claim of events has been broken for purposes of the felony murder rule.

In the matter before the bar, Petitioner was in police custody when the murder occurred, therefore, under Pennsylvania law, he could not be charged with or convicted of second degree murder and sentence to life imprisonment. The chain of events that led to the felony was separate than the events that led to the murder.

The district court found that the habeas corpus petition was untimely filed. Reasonable jurists would debate that ruling in light of the fact that Petitioner is legally innocent and continued incarceration of an individual who is legally innocent is violative of the Eighth Amendment, cruel and unusual punishment, and the due process clause of the Fourteenth Amendment.

Central to the American jurisprudence is the concept that the violation of any right has a remedy in law. When a state is alleged to have violated a protected right, it is necessary for some remedy to be available. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-63, 2 L.Ed. 60 (1803) ("The very essence of civil liberties consists in the right of every individual to claim the protection of the law whenever he receives injury.").

A liberal construction of Marbury v. Madison, would imply that there should be no time on justice. An American citizen at all times should have an avenue in which to protect his rights, in this case, right to due process of law. As it presently stands, the law as currently constructed allows for innocent people to be incarcerated for the rest of their lives because time is placed on justice.

FAILURE TO GRANT CERTIFICATE OF APPEALABILITY

This Court in Miller-El v. Cockrell, 537 U.S. 322 (2003), stated The Certificate of Appealability (COA) determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits. We look to the District Court's application of AEDPA to Petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

"To that end, our opinion in Slack held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner "has already failed in that endeavor. Quoting Barefoot, *supra*, at 893, n 4, 77 LED 2d 1090, 103 S.Ct. 3383."

Id. at 337.

Based upon the above discussion, Petitioner should have been granted a COA and the Court of Appeals for the Third Circuit not to grant a COA was an abuse of its discretion, and as a result, this Court should remand the matter back to that Court for a determination on the merits.

CONCLUSION

For the reasons stated, Petitioner respectfully hopes and prays that this High Court will grant the petition.

Respectfully submitted,

/s/Scott Anderson