

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

April 06, 2023

CASE NO.: 6D23-1759

L.T. No.: 07-738

SCOTT HUSS

v.

RICKY D. DIXON, SECRETARY OF
THE FLORIDA DEPT. OF
CORRECTIONS

Appellant / Petitioner(s),

Appellee / Respondent(s).

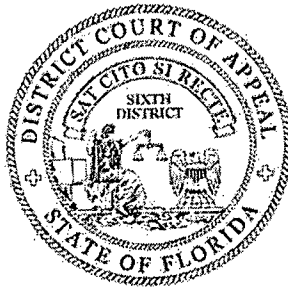
BY ORDER OF THE COURT:

Petitioner's petition for writ of habeas corpus is denied.

I hereby certify that the foregoing is a true copy of the original court order.



Stacey Pectol
Clerk



PANEL: COHEN, TRAVER, and WOZNIAK, JJ.

cc:

ATTORNEY GENERAL, TAMPA
ROGER EATON, CLERK

SCOTT HUSS

Appendix A

MANDATE

from

DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
SIXTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY PETITION,
AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS
OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER
PROCEEDINGS BE HAD IN SAID CAUSE, IF REQUIRED, IN ACCORDANCE
WITH THE OPINION OF THIS COURT ATTACHED HERETO AND
INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF
PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE CHIEF JUDGE OF THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, SIXTH DISTRICT, AND THE SEAL
OF THE SAID COURT AT LAKE LAND, FLORIDA ON THIS DAY.

DATE: April 27, 2023


SIXTH DCA CASE NO. 23-1759

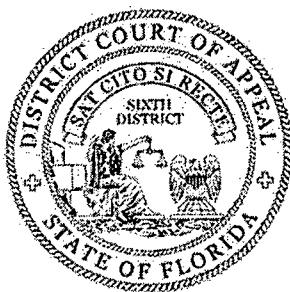
COUNTY OF ORIGIN: Charlotte

LOWER TRIBUNAL CASE NO. 07-738

CASE STYLE: SCOTT HUSS

v. RICKY D. DIXON,
SECRETARY OF THE
FLORIDA DEPT. OF
CORRECTIONS


Stacey Pectol
Clerk



cc: (without attached opinion)
ATTORNEY GENERAL, TAMPA
ROGER EATON, CLERK

SCOTT HUSS

Appendix B

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL DISTRICT
2 IN AND FOR CHARLOTTE COUNTY, FLORIDA CRIMINAL ACTION

3 STATE OF FLORIDA,)
4 Plaintiff,)
5 vs.) Case No. 07-738-CF
6 SCOTT L. HUSS,) VOLUME I OF XI
7 Defendant.) PAGES 1-184

8
9 EXCERPTS OF TRIAL PROCEEDINGS

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11
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13 Before the Honorable John W. Dommerich,
14 Circuit Judge, at a hearing in the above-styled
15 action held in the Charlotte County Justice
16 Center, Punta Gorda, Florida, on the 29th and
17 30th days of November, and 1st, 2nd and 3rd days of
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COPY

Pretrial Matters

1 discussed some things informally in that
2 regard. That's my understanding of where we
3 are with those discussions, so there isn't
4 any detail to give the Court - we didn't do
5 that anyway - but I just wanted to make sure
6 that the defendant acknowledges the same
7 knowledge as I just put on the record.

8 THE COURT: Well, that there were
9 informal discussions but no solid offer?

10 MR. FEINBERG: Right. Right.

11 THE COURT: Mr. Marryott, do you agree
12 with that?

13 MR. MARRYOTT: I certainly agree with
14 it, Judge. And I'm sure if you inquire of
15 Mr. Huss he would tell you the same.

16 THE COURT: Mr. Huss, is that the
17 understanding as well, that there have been
18 informal discussions regarding a plea offer
19 but no actual offer made by the State?

20 THE DEFENDANT: Yes, sir. That's
21 correct.

22 THE COURT: Okay, thank you, sir.

23 MR. FEINBERG: Your Honor, secondly the
24 prior testimony of Petir Shalin - that's
25 S-h-a-l-i-n, for the court reporter, as I

Pretrial Matters

1 mentioned before, that was recorded by video
2 and it was transcribed. And I met with Mr.
3 Marryott, as I said we would, last week and
4 also discussed it with Mr. Powell. We were
5 able to agree to redactions of the transcript
6 that I have had my I.T. personnel already
7 make a redacted copy.

8 Mr. Marryott and I and Mr. Powell and I
9 disagree on one area within the transcript.
10 We're going to ask the Court at some time to
11 make a ruling on it. I don't think that we
12 will get to that testimony 'til Wednesday, so
13 I would ask the Court to consider what time
14 would be best for Your Honor and parties to
15 handle that.

16 What we did, so we wouldn't delay
17 anything, is we made two redacted copies:
18 One without the part in question.

19 THE COURT: Okay.

20 MR. FEINBERG: And one with the part in
21 question. And I gave Mr. Powell -- was it
22 Wednesday, I think Wednesday evening -- I
23 gave him the copy that they're seeking. And
24 I kept the one I'm seeking, plus I have the
25 original. So that matter is pending before

Pretrial Matters

1 the Court.

2 In the deposition, there was an
3 objection made at the time of this redaction,
4 so it's not an objection that's coming up
5 after the fact. And Judge Porter, who was
6 presiding, reserved on the issue, so --

7 THE COURT: Yes, sir.

8 MS. FEINBERG: -- it is pending, the one
9 we couldn't agree upon.

10 The next issue is we did accomplish the
11 deposition to perpetuate, pursuant to court
12 order, of Evelyn Bigord in Tampa, at the FDLE
13 Laboratory. We have her video -- the video
14 of her transaction. Mr. Marryott has had a
15 copy and I have a copy. We got that within
16 hours after the deposition. We waited in
17 Tampa so she could -- he could give that to
18 us with the videographer. And she, the court
19 reporter, did transcribe it on an expedited
20 basis.

21 I have the transcripts in my e-mail but
22 they're not printed yet.

23 Mr. Marryott made a couple objections.
24 I don't know how we want to handle those.
25 But we would be looking at that testimony

J. Huss Cross

1 afternoon, he actually told you two black men broke
2 into the house?

3 A That's correct.

4 Q And isn't it also true, that at no time while
5 you were there with Petir, did Petir ever tell you that
6 Scott killed his mother?

7 A He did not. It was always the black man or
8 two black men.

9 Q Could I have just a moment?

10 A And he --

11 Q I'm sorry?

12 A -- changed -- he changed his --

13 MS. FEINBERG: Objection, Your Honor.

14 Non-responsive.

15 THE COURT: Sustained.

16 MR. POWELL: May I have just a moment?

17 THE COURT: Yes, sir.

18 MR. POWELL: Thank you, Miss Huss. No

19 other questions.

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21 ///

22 ///

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1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL DISTRICT
2 IN AND FOR CHARLOTTE COUNTY, FLORIDA CRIMINAL ACTION

3 STATE OF FLORIDA,)

4 Plaintiff,)

5 vs.)

) Case No. 07-738-CF

6 SCOTT L. HUSS,)

) VOLUME VI OF XI

) PAGES 875-1050

7 Defendant.)

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COPY

J. Frazier Proffer

1 information out of him.

2 Q Tell us how that conversation went.

3 A Um, I have a son the same age, so I was more
4 familiar with speaking with a, I think at that time, it
5 may be an eight-year-old boy.

6 It -- it's interesting because it's almost
7 like you could put your hand in front of his face and
8 he would communicate but he wasn't really there. It
9 was just -- you could tell he was -- he was in a state
10 like just shock.

11 I asked him what had happened. He described
12 to me that his mom had come home. He was in the
13 bathroom, I think brushing his teeth or something like
14 that, and then heard his mom scream. Came out and saw
15 a black man -- and I want to be clear, when I say
16 "black man", I don't think he was intending to mean a
17 black person, more a man in black. Saw a black man
18 attack -- attack his mom, grab her purse, and then --

19 Q Grab whose purse?

20 A Grab Yana's purse.

21 Scott was sleeping, came out --

22 Q According to Petir?

23 A According to Petir, Scott was sleeping, came
24 out, threw the -- threw the black man out of the
25 house. And then the black man came back. But then he

J. Frazier Proffer

1 left it kind of incomplete there. The black man came
2 back, but he didn't say, you know, if Scott did
3 anything. I recall asking him if, you know, "Well,
4 when Scott saw him, did Scott, you know, come at him
5 with a gun? Or come, you know, with anything to try to
6 protect the family?" He didn't respond to that
7 question. So he left it very incomplete.

8 It was -- it was, um, very simple in that
9 form. And then, maybe like two more times, he pretty
10 much described the same scenario over again. So
11 pretty much whatever question I would ask of him, he
12 would give the same type of response...that bathroom,
13 black man, Scott. So no matter where I went with my
14 questions, it -- I kept getting the same -- same
15 replies. It was very, uh --

16 Q What's the timeframe that elapses where he
17 gives you these three recitations of that -- of that
18 story?

19 A I would say over a 20-minute window that --
20 that he gave me the same recitation of facts or -- or
21 what he was telling me. And, um, you know, it was very
22 -- I tried to be very, uh, passive with him in the
23 sense where I was letting him respond in his own time.
24 I wasn't trying to force anything from him -- from him.

25 You know, I recall making some comments about

J. Frazier

Proffer

1 moment ago.

2 A No, I don't believe I made that -- that he
3 made the jump at that point -- that I made the
4 inference that when he was talking about black man that
5 he went -- that he went to Scott Huss. I don't think I
6 just said that.

7 Q Okay. And I --

8 A No, I'm just saying --

9 THE COURT REPORTER: I can only take one
10 at a time, please.

11 Excuse me.

12 THE COURT: Okay, let's not talk over
13 each other.

14 THE WITNESS: Sure.

15 Q (By Mr. Powell) Initially Petir didn't tell
16 you that the black man was Scott Huss, is that correct?

17 A That's correct.

18 Q Your testimony is that eventually you made
19 the inference that the black man was Scott Huss,
20 correct?

21 A I don't think I have testified to that.

22 Q I'm not asking if you testified to it. I'm
23 asking if that was the inference you made?

24 A If that's an inference I made? That's an
25 inference that -- that I deduced, not at the time that

J. Frazier Proffer

1 the statement themselves, I don't remember.

2 Q But my question specifically to you is: Did
3 you turn around, after he told you this, and see if
4 anybody was listening or tell anybody else? Did you?

5 A I don't remember.

6 MR. POWELL: No other questions. Thank
7 you.

8 THE COURT: Any further questions by the
9 State?

10 MR. FEINBERG: No, Your Honor.

11 THE COURT: Okay, sir, you can step down
12 and go outside the courtroom, please.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 Okay, I would like to hear the State's
16 argument first.

17 MR. POWELL: I guess, obviously for the
18 sake of foundation, we are objecting to all
19 of his testimony regarding comments he made.

20 THE COURT: Yes, sir, I assumed you were.

21 MR. FEINBERG: Under 90.083(2), Your
22 Honor, the statement or excited utterance
23 relating to a startling event or condition
24 made while the declarant was under the stress
25 of excitement caused by the event or

1 condition is admissible under the rule. And
2 considering the type of the event which Petir
3 had testified, in his sworn testimony to,
4 which has been perpetuated, it's not much of
5 a stretch at all to realize that he would be
6 affected by the stress and the excitement of
7 that event for some time.

8 The testimony of the witness, Mr.
9 Frazier, I submit was credible, and was as
10 descriptive as he could be. And it
11 demonstrated the foundation required by the
12 rule 90.083(2) to allow the admission of the
13 utterance as an excited utterance under the
14 rule.

15 THE COURT: Mr. Powell.

16 MR. POWELL: Judge, first and foremost,
17 an excited utterance is not a statement made
18 in response to questioning. It's very clear,
19 from the testimony Mr. Frazier, that he
20 initiated a conversation with this child and
21 asked him questions. That alone takes this
22 out of the realm of the category of 083(2) as
23 an utterance.

24 If you look at some of the cases. And
25 Mr. Feinberg has the Ehrhardt, just as I do,

1 Stoll v. State, 762 So.2d 870, states three
2 requirements must be met. There must be have
3 event startling enough to cause nervous
4 excitement. We'll grant you that, certainly
5 at the time that this happened, there was
6 nervous excitement.

7 (2) The statement must have been made
8 before there was time to contrive or
9 misrepresent.

10 The testimony you've heard already is
11 this child was dropped off at Miss Huss'
12 residence before lunchtime. Mr. Frazier
13 is testifying that it is at least 3:30, 4:00
14 that he's there questioning the child. So we
15 have a four-hour gap in time. That's not
16 even the gap in time from when the alleged
17 murder took place. And the M.E.'s testimony
18 aside, I don't believe that murder took place
19 at 11:30. We know it took place earlier in
20 the morning. But we're dealing with probably
21 seven to eight hours from the time of the
22 event to the time these statements were made
23 to Mr. Frazier -- or I should say the answers
24 in response to his questions are made.

25 The third element is that the statement

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) VOLUME VII OF XI

) PAGES 1051-1232

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COPY

Playing of Audio Tape

1 THE COURT: Okay, now, it is.

2 MR. FEINBERG: Didn't sound like it was
3 picking it up to me.

4 THE COURT: Didn't sound like it to me
5 either.

6 (Thereupon, the tape began playing and the
7 transcript that follows is the court
8 reporter's transcript to the best of his
9 ability)

10 "MR. HUSS: I'm not sure how things got
11 to this point. It's kind of ridiculous, this
12 world.

13 And the judicial system's wrong. The
14 judge -- the judges are wrong. The -- the
15 law enforcement is wrong. Nobody -- nobody
16 can, uh, get the -- the crap out from their
17 -- front of their face to see the truth. And
18 if somebody's honest and actually tells 'em
19 the truth, they wanna believe it, they don't
20 want to believe it, you know. I -- I mean,
21 I've had these guys look at me and call me a
22 bold-face liar, and a good (unintelligible)
23 pass a polygraph on what was supposed to be
24 lies and -- and it's happened over and over
25 again.

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3 STATE OF FLORIDA,)
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6 SCOTT L. HUSS,) VOLUME VIII OF XI
7 Defendant.) PAGES 1233-1412

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COPY

1 MR. FEINBERG: But let me see 3.10.

2 THE COURT: I didn't -- I didn't have
3 one in my copy.

4 MR. FEINBERG: Hmm, it's missing out of
5 mine too.

6 THE COURT: Okay, I guess we need
7 to --

8 MR. FEINBERG: We'll add that in then.

9 It's a standard so there aren't any
10 variables.

11 THE COURT: That's true.

12 Okay, anything to discuss before we
13 bring the jury in and proceed?

14 MR. FEINBERG: No.

15 MR. MARRYOTT: If it's the State's
16 intention to play the depo of Petir Shalin at
17 this point, then I -- it might be wise for me
18 to make -- to renew my objection now and for
19 you to rule on it, rather than in front of
20 the jury.

21 THE COURT: Okay, and the grounds again
22 were? For the record.

23 MR. MARRYOTT: For the record, Judge, as
24 I told Judge Porter, we had inadequate time
25 to prepare to take the deposition. The

1 grounds for taking the deposition at that
2 time did not meet the test of the need for a
3 deposition to perpetuate testimony.

4 But, for our purposes, I'm renewing it
5 because the State has not -- just adopting
6 the argument from earlier on, that the State
7 has not used all measures necessary to get
8 him back, or prove that they exhausted those
9 measures to bring Petir back before this
10 deposition is introduced on video.

11 THE COURT: Okay. And as I -- I stand
12 by my previous ruling, I overrule your
13 objection.

14 MR. FEINBERG: Your Honor, I have nine
15 -- I have 10 copies of the transcript with
16 the redacted portions.

17 THE COURT: Um-hmm.

18 MR. FEINBERG: So I suppose when we do
19 this, and we do the video, again an
20 instruction that some issues have been
21 redacted based on your rulings would be
22 appropriate. And would I give the nine
23 copies to, Your Honor, now? And do you want
24 one? Or do you already have one with
25 redactions?

Playing of E. Bigord Video

1 MS. KUYKENDALL: Are you ready?

2 THE COURT: Okay, members of the jury,
3 you're going to hear some testimony that was
4 previously taken by audio-visual means that
5 is now going to be played to you.

6 MS. KUYKENDALL: May I proceed?
7

8 (Thereupon, the tape started playing at 3:13
9 p.m. and the following is a transcript
10 prepared to the best of the court reporter's
11 ability)
12

13 THE VIDEOGRAPHER: Sound check 1.

14 Sound check 1.

15 Sound check 2. Sound check 2.

16 Sound check 3. Sound check 3.

17 Sound check 6. Sound check 6.

18 This is Tape 1 to the videotaped
19 deposition of Evelyn Bigord, in the matter of
20 State of Florida versus Scott Huss, being
21 heard before the Circuit Court, 20th Judicial
22 Circuit in and for Charlotte County,
23 Florida. Case File number 07-738CF.

24 The deposition is being held at
25 4211 N. Lois Avenue, in Tampa, Florida, on

Playing of E. Bigord Video

1 Thereupon,

2 EVELYN BIGORD,

3 was called as a witness and, after being
4 first duly sworn, was examined and testified
5 as follows:

6

7 DIRECT EXAMINATION

8 BY MR. FEINBERG:

9 Q Good morning.

10 Please state your name for the Court.

11 A My name is Evelyn Bigord, B-i-g-o-r-d.

12 Q And what is your occupation?

13 A My occupation is a Crime Laboratory analyst
14 in the Florida Department of Law Enforcement, the Tampa
15 Bay Regional Operations Center.

16 Q And how long have you been employed by the
17 Florida Department of Law Enforcement?

18 A I have been employed since November 2003.

19 Q And do you have a specific assignment at the
20 Florida Department of Law Enforcement?

21 A Yes. I undergo forensic serology and DNA
22 analysis.

23 Q And for how long of the time that you have
24 been with the Florida Department of Law Enforcement
25 have you worked in that area?

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COPY

P. Shalin Direct

1 Petir Paviovich Shalin being taken --

2 PETIR SHALIN: Shalin.

3 THE COURT REPORTER: -- Shalin,
4 excuse me -- being taken on October 16th,
5 2007. The time is approximately 1:18 p.m.

6 Would counsel please state their
7 appearance for the record.

8 MR. FEINBERG: I'm Dan Feinberg for the
9 State of Florida.

10 MR. MARRYOTT: Tom Marryott on behalf of
11 Scott Huss.

12 MR. FEINBERG: Also present are the
13 guardian ad litem, the Harters, Elizabeth
14 and sprang Harter, and victim advocate Marsha
15 Baker.

16 Also presiding is Judge Porter.

17 May I proceed, Your Honor?

18 THE COURT: Yes, you may.

19 Q (By Mr. Feinberg) Petir, I've gotta ask you
20 a couple questions. Is that okay?

21 A Yes.

22 Q All right. Now, what I want you to first do
23 is tell me your full name.

24 A Petir Shalin.

25 Q Okay. And spell your last name for us.

1 STATE OF FLORIDA)
)
2 County of Charlotte)

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I, Gary W. Hunter, Court Reporter for the
20th Judicial Circuit of Florida, do certify that I
was authorized to and did stenographically report
the foregoing proceedings and that the typewritten
transcript of proceedings, consisting of 1869 pages
is a true record.

Dated this 21st day of February, 2011.

Gary W. Hunter

Gary W. Hunter, Court Reporter