

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-411

SCOTT MANSFIELD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA**

REPLY BRIEF OF THE APPELLANT

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REPLY TO STATEMENT OF THE CASE AND FACTS

In its answer brief, the State reproduced a lengthy portion of this Court's direct appeal opinion. The State's approach was contrary to the analysis that this Court requires. As this Court has stated, "Based on the standard set forth in *Jones II*, the postconviction court must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial." *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013).

The State's omission of the evidence developed at postconviction was an invitation to repeat the apparent mistake of the lower court because it failed to consider the evidence developed in the original postconviction proceedings. The lower court's order failed to consider fully the postconviction evidence detailed in Mr. Mansfield's Initial Brief now before this Court. While this Court may have earlier denied relief on the discrete claims raised in Mr. Mansfield's original postconviction litigation, the facts that were developed at hearing should be an important part of this Court's analysis because it points towards Mr. Mansfield's innocence and refutes the alleged circumstantial evidence against Mr. Mansfield.

A glaring example of this was seen in the postconviction hearing evidence concerning Mr. Johns' multiple counts of federal bank robbery that he faced while testifying against Mr.

Mansfield. The jury, the trial court, and this Court on direct appeal, did not know the truth about the charges that Mr. Johns faced in the federal system which were developed in postconviction. Shortly after testifying against Mr. Mansfield, Mr. Johns disposed of multiple state charges. Mr. Johns' greatest exposure, however, was to the federal sentencing guidelines for bank robbery where, even with credit for his testimony against Mr. Mansfield, he faced lengthy incarceration. The jury that convicted Mr. Mansfield did not know this information.

Postconviction presented a more complete understanding of the relevance, or the lack of relevance, of Mr. Mansfield's pager. At trial, Detective Sheppard identified a photograph of Mr. Mansfield's pager as Exhibit 3 as "a close-up of a clear pager that was found within eight feet of the body immediately adjacent to the structure of the Winn-Dixie building." (Dir. Vol. T. 324). The State did not present a photograph of Mr. Mansfield's pager located in close proximity to where the victim's body was discovered. The photograph that the jury saw simply showed a pager that could have easily have fallen off when Mr. Mansfield was seen urinating on the side of the supermarket or it could have been moved. There was no forensic evidence on the pager such as the victim's fingerprints or the victim's DNA that incriminated Mr. Mansfield. In fact, law enforcement removed the

pager from the crime scene without dusting for fingerprints, thus denying Mr. Mansfield any evidence that the pager was handled and moved by law enforcement in manner that was falsely inculpatory. See (Vol. VI PCR. 698-99). During postconviction, law enforcement's testimony about the location of the pager differed greatly. Any possible impact of the other circumstantial evidence was diminished by the questionable and differing accounts by law enforcement of location of the pager in relation to the crime scene.

The State's account of the Eleventh Circuit's decision in Mr. Mansfield's case was that, "the Eleventh Circuit Court of Appeals reversed the [district] court's order granting habeas relief and found that the admission of Mansfield's statement to law enforcement in violation of *Miranda* was indeed harmless error as correctly found by this Court on direct appeal. *Mansfield v. Secretary, Dept. of Corr.*, 679 F.3d 1301 (11th Cir. 2012), *cert. denied* 133 S.Ct 861 (2013)" failed to take account the nature of federal habeas review. See (AB at 6).

The question before the federal courts was not whether this Court's direct appeal decision was correct. 28 U.S.C § 2254 provides in relevant part:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the

claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Federal habeas corpus review is severely limited and differs greatly from the review of this Court and the trial court below. Federal habeas corpus requires great deference to the state court decisions and only under exceptional circumstances is there anything approaching *de novo* review. Moreover, under AEDPA, the Eleventh Circuit *could not* consider any evidence developed during postconviction on any issue exhausted on direct appeal. This Court, following its own standards set forth in *Jones* and its progeny, must consider that evidence that would be admissible at a retrial. The retrial of Mr. Mansfield would be far different from the case that was submitted to the jury that convicted him and which this Court reviewed on direct appeal.

The "harmless error" that this Court applied under *Chapman v. Cal.*, 386 U.S. 18, 87 S.Ct. 824 (1967)(which requires a constitutional error to be harmless beyond a reasonable doubt) is different from *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993)(which requires that a constitutional error to be "substantial and injurious" to avoid harmless error). The

Eleventh Circuit concluded that under the more arduous federal habeas harmless error standard, "the erroneous admission at trial of a videotape of Mansfield's interrogation by law enforcement officers was harmless error under *Brecht*." *Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301, 1315 (11th Cir. 2012).

The differing harmless error standards, and the deference to this Court's decision making under AEDPA, highlights the importance of this Court in determining first, and completely, important constitutional issues like those presented in this case. Exercising that important jurisdiction, this Court faces no obstacle to reaching the unconstitutionality that has denied Mr. Mansfield a full and fair trial worthy of confidence in its outcome.

Lastly, regarding the appointment of counsel for Mr. Johns, while the State correctly recounts that "Mansfield's counsel did not object to the court's advice or to the appointment of [Deputy Chief] Forrester[]"(AB at 8, n.3; citing V5:264). This was not an express or implied waiver. The United States Constitution guarantees the right to counsel and the right to remain silent. While Mr. Mansfield was denied these rights, undersigned counsel, as a member of the Florida Bar, and having taken an oath to uphold the United States Constitution, could not object to Mr. Johns being afforded his constitutional rights.

REPLY ARGUMENT

Mr. Mansfield takes issue with the State's recharacterization of Mr. Mansfield's argument. Mr. Mansfield presented two bases for relief based on Mr. John's letter: First, the newly discovered evidence that Mr. Johns' letter would preclude his being called as a witness at retrial. As seen at the evidentiary hearing, Mr. Johns admitted to writing the letter to Investigator Dale Cordova. The letter itself would be hearsay if Mr. Mansfield attempted to simply admit the letter at a retrial. It would not be hearsay if it was offered to impeach Mr. Johns' testimony. Certainly retrial counsel could ask Mr. Johns if he ever recanted his trial testimony, or as the State argues, "offered to recant" his testimony. If the answer were yes, there would be no need to admit the letter. If Mr. Johns had not already invoked his right to remain silent, his denial could certainly be impeached with the letter that he told Mr. Cordova he wrote.

Mr. Mansfield surmounted the initial authenticity hurdle of having the letter considered at the successive evidentiary hearing. See (Vol. V SPCR. 313). The court assumed that Mr. Johns authored the letter and found that Mr. Mansfield was not required to prove authenticity. The letter did not have to be admissible as substantive evidence in the defense case-in-chief to have an effect on the outcome of a retrial.

If Mr. Johns were called at a retrial to provide the same testimony he provided at the original trial, the State would do so at its own peril. However Mr. Johns' letter is characterized, it unmistakably expands the level of untrustworthiness he presented beyond even his multiple felony convictions. The State would lose all credibility if it presented a witness that wrote the letter that Mr. Johns did. In addition to his multiple felonies and crimes involving dishonesty, Mr. Johns lied at least one more time, and for a reasonable jury that would be one time too many.

The lower court's order missed the significance of the letter and the effect that it would have at retrial. Without revelation of law enforcement and the prosecution's misconduct, Mr. Mansfield would not call Mr. Johns as a witness based on the letter at a retrial. Mr. Johns' testimony led to Mr. Mansfield's false conviction and death sentence at the first trial. Seeking the fair and just trial that he was originally denied, Mr. Mansfield does not need him to present the truth.

The State's brief misconstrues the probative value of Mr. Johns' letter. If a defendant writes a letter stating that he or she will confess to the crime at an upcoming court date but issues no such confession, and the State lawfully obtained the letter, it would be admissible against the defendant. Whether technically an admission or a confession, the evidence would not

be withheld from the jury simply because it does not prove every ultimate fact. The evidence of the potential confession would be admissible even if there were contrary evidence tending to show that the defendant did not commit the offense. Trials are held to decide these issues. If the State called Mr. Johns to testify against Mr. Mansfield, Mr. Mansfield would have the right to defend himself. *Chambers v. Miss.*, 410 U.S. 284 (1973).

Second, Mr. Mansfield raised an important question of whether legal decisions that relied on Mr. Johns' trial testimony can stand in the wake of Mr. Johns' letter. The jury that convicted Mr. Mansfield did not know that Mr. Johns was so dishonest that he would later write the letter in question. The trial court, which sentenced Mr. Mansfield to death, knew nothing of the coming letter and even relied on Mr. Johns' testimony to diminish the weight of Mr. Mansfield's mitigation. *Mansfield v. State*, 758 So.2d 636, 646-47 (Fla. 2000). This Court went on to affirm Mr. Mansfield's conviction and death sentence, after finding the admission of Mr. Mansfield's illegally obtained interrogation was "harmless." The federal courts also afforded weight to Mr. Johns' testimony, significantly more in the Eleventh Circuit. To the extent that each court relied on Mr. Johns to deny Mr. Mansfield relief from constitutional violation, those decisions should not stand.

CONCLUSION

The ultimate issue before this Court is how much error and taint is acceptable in a case in which the State seeks the death penalty. Mr. Mansfield's conviction was based on suspect circumstantial evidence, an illegal interrogation and the testimony of Michael Johns, a multiple-convicted-felon and a dishonest man.

A trial is an important truth-finding vehicle that the society places great trust. The circumstantial evidence against Mr. Mansfield, if considered free from the taint of the illegal interrogation and with consideration of the viable alternative suspect William Finneran, is insufficient to have confidence in the outcome of this case. When the diminished credibility of Mr. Johns' is considered, it is inescapable that Mr. Mansfield receive a new trial. The State assumed the risk of presenting a multiple convicted-dishonest-felon to obtain Mr. Mansfield's conviction and death sentence. It now must bear the costs. This Court should reverse.

CERTIFICATE OF SERVICE

We certify that a copy hereof has been furnished to opposing counsel by filing with the e-portal, which will serve a copy of this Reply Brief on Katherine M. Diamandis, Assistant Attorney General and Stephen Ake, Assistant Attorney General on this 13th Day of November, 2015.

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I hereby certify that a true copy of the foregoing Reply Brief of the Appellant, was generated in a Courier New, 12 point font, pursuant to Fla. R. App. P. 9.210.

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