AlaFile E-Notice

23-CC-1985-000164.61

Judge: CHARLES A. SHORT

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF COVINGTON COUNTY,
ALABAMA

STATE OF ALABAMA V. MCCRORY CHARLES C
23-CC-1985-000164.61

The following matter was FILED on 2/14/2022 8:36:21 AM

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AMY JONES
CIRCUIT COURT CLERK
COVINGTON COUNTY, ALABAMA
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CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA
AMY JONES, CLERK

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS.	*	Case No. CC-1985-164.61
CHARLES C. MCCRORY,	*	
DEFENDANT.	*	

ORDER

This case is before the Court upon the petition of the defendant for post-conviction relief from judgment or sentence pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. The defendant attached a brief to his petition, and the State filed a response to the petition. The Court held an evidentiary hearing on April 28, 2021, and at the conclusion of the hearing, Ordered the parties to submit post-hearing briefs within thirty (30) days. The Court having reviewed the filings of the parties and heard and considered the evidence adduced at the evidentiary hearing and the arguments of the parties, the Court hereby makes the following findings:

The defendant has alleged that he is entitled to relief on grounds of "newly discovered material facts" pursuant to Rule 32.1(e), Ala.R.Crim.P. To succeed on a claim of newly discovered evidence, a defendant must satisfy all five (5) requirements set out in Rule 32.1(e). The parties agree that the defendant has met the first two requirements, and the Court agrees as well. The defendant cannot reasonably be expected to have anticipated that the American Board of Forensic Odontology (herein referred to as "ABFO") would change its standards for the comparison of bite mark evidence, nor can the changed standards be reasonably considered as cumulative of other evidence presented at trial. The Court finds that he has met the requirements

set forth in Rule 32.1(e)(1) and (2).

The Court finds the defendant has not, however, satisfied the remaining three (3) requirements of Rule 32.1(e) by a preponderance of the evidence. Dr. Richard Souviron testified at the defendant's 1985 trial as an expert witness in the field of forensic odontology. He testified on direct examination that, in his opinion, the pattern injury to the victim's arm was "teeth marks" and that by comparing photographs of the injury with a mold of the defendant's teeth, he opined that the defendant's teeth caused the injury to the victim's arm. Subsequently, on cross examination Dr. Souviron admitted that, "it's not positive for Charles McCrory," and went on to agree with defense counsel that in a letter that he generated in this case he stated , "First of all it is impossible in my opinion, unless very unusual circumstances exist, to make a positive identification from two teeth of a bite mark. Regardless of how unusual the two teeth happen to be." He explained to the jury the difference between "teeth marks" and "bite marks." Dr. Cynthia Brzozowski and Dr. Adam Freeman testified at the evidentiary hearing as expert witnesses in the field of forensic odontology. Drs. Brzozowski and Freeman testified that, in their opinions, the injury was not a "bite mark," according to the standards published by the ABFO in 2018. Dr. Brzozowski testified that the 2018 standards do not include criteria for evaluating and comparing "teeth marks." Both Drs. Brzozowski and Freeman testified that Dr. Souviron complied with the ABFO standards that were in place at the time of the crime, investigation, and trial in 1985. The Court finds that their opinions could be construed as impeachment of Dr. Souviron's opinion regarding the nature and cause of the injury. The Court further agrees that, according to Handley v. State, 515 So. 2d 121 (Ala. Crim. App. 1987), the jury had the ability to compare the physical evidence of the photographs of the injury to the

victim's arm and the mold of the defendant's teeth for themselves and thus conclude that the defendant's teeth matched the marks of the injury.

The Court further finds that the defendant has not shown by a preponderance of the evidence that the result of his trial probably would have been different had Dr. Souviron not testified, as is required by Rule 32.1(e)(4).

The appellate courts have made clear that, in determining whether a defendant has satisfied the requirement of Rule 32.1(e)(4), the Court's "calculation must be made based on the probative value of the newly discovered evidence and its relationship to the other evidence presented to the jury." Ex parte Ward, 89 So. 3d 720, 728 (Ala. 2011). The Court has reviewed the sufficiency of the evidence which remains after taking out, as it were, the testimony of Dr. Souviron, and the Court is unconvinced that the outcome of the trial probably would have been different had the jury not heard Dr. Souviron's testimony.

The Court has reviewed the transcript of the trial in its entirety. The Court finds that the evidence against the defendant was sufficient for a rational finder of fact to reasonably exclude every hypothesis except that of guilt, even absent the testimony of Dr. Souviron. The jury could have made the physical comparison between the injury to the victim's arm and the mold of the defendant's teeth on their own. Further, they heard evidence that the defendant, the victim, and the defendant's parents were the only persons with a key to the victim's home. They heard testimony from Andalusia Police Investigators that there were no signs of forced entry into the victim's home. The jury heard the evidence of Hubert Walker and Wayne Meeks that they saw the defendant's vehicle, with which they were familiar, parked outside the victim's home between 5:00 and 5:30 on the morning of her murder. They heard the defendant's statements, in

which he denied leaving his apartment after 10:30 the night before until after 7:00 the next morning. The jury also heard that the defendant asked Andalusia Investigator Billy Frank Treadaway and Department of Forensic Sciences Investigator Charlie Brooks whether it was the "licks" or "blows" to the back of the victim's head which caused her death. Both Investigator Treadaway and Mr. Brooks testified that they were unable to see whether the victim had any "licks" or "blows" to the back of her head. Mr. Brooks, who conducted a preliminary examination of the body, testified that he determined that the time of death was after midnight, "towards the early morning hours." Dr. Joseph Sapala, who performed the autopsy, determined that the cause of the victim's death was "multiple trauma," including "chop wounds of the head, a depressed skull fracture." He testified that "chop wounds are sliced, deep wounds" and that during his examination of the victim's body, he "saw four of those to the back of the head and one to the left side of the head." The Court finds that from the evidence presented to them, absent the testimony of Dr. Souviron, the jury could have reasonably found that the defendant returned to the home of the victim during the early morning hours of May 31, 1985, entered the home using his key, and murdered her.

Lastly, the Court finds that the defendant has not satisfied the requirement that the newly discovered facts establish that he is innocent of the crime for which he was convicted, as set out in Rule 32.1(e)(5). The Court finds that the absence of Dr. Souviron's testimony would not demonstrate that the defendant is innocent of the murder of the victim.

The defendant also argues that he is entitled to post-conviction relief under Rule 32.1(a), in that "the constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief." The Court finds that he has not proved by a

preponderance of the evidence that he is entitled to the relief he seeks on this ground.

Accordingly, it is hereby ORDERED that the defendant's Petition for Post-Conviction Relief Filed Pursuant to Rule 32 is hereby DENIED and DISMISSED with prejudice.

The Clerk shall furnish a copy hereof to the Defendant and the District Attorney.

DONE and ORDERED this 11th day of February, 2022.

CHARLES A. SHORT
CIRCUIT JUDGE